

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.210/00740/2019

Dated this Thursday the 13th day of February, 2020

Coram: Dr.Bhagwan Sahai, Member (Administrative)
R.N. Singh, Member (Judicial).

Anand Arjun Kodam,
Working as Principal Scientific Officer,
Controllerate of Quality Assurance
(Vehicles), Ahmednagar,
Residing at : 'Krishna',
70, Renavikar Colony, Ujwal Nagar, Savedi,
Ahmednagar - 414 003. .. Applicant.

(By Advocate Shri V.A. Nagrani).

Versus

1. Union of India, through
the Secretary,
Ministry of Defence,
Department of Defence Production,
Room No.136, South Block,
New Delhi - 110 011.
2. The Director General of
Quality Assurance,
Room No.308-A, D-1 Wing,
Sena Bhawan,
P.O. New Delhi - 110 011.
3. The Additional Director General
(DQA) (Vehicles),
Room No.86, 'G' Block,
Nirman Bhavan,
P.O. New Delhi - 110 011.
4. The Controller,
Controllerate of Quality
Assurance (Vehicles),
P.O. Box No.2,
Ahmednagar - 414 003. .. Respondents.

(By Advocate Shri R.R. Shetty).

Order reserved on : 14.01.2020

Order delivered on : 13.02.2020.

O R D E R
Per : Dr.Bhagwan Sahai, Member (A) .

Shri Anand Arjun Kodam, working as Principal Scientific Officer, Controllerate of Quality Assurance (Vehicles), Ahmednagar has filed this O.A. on 24.10.2019 seeking quashing and setting aside of orders of respondents dated 19.07.2019 and 11.10.2019 with consequential benefits and directions to the respondents to consider his case for posting at Pune/Mumbai station as per DOPT OM dated 30.09.2009 with all consequential benefits along with providing cost of this application.

2. Summarized facts:

2(a) . The applicant has stated that after his initial appointment as Chargeman-II at Ahmednagar on 27.11.1998, was subsequently posted as JTO on 25.06.2007 at Kolkata (after selection through UPSC), as Sr. Scientific Officer-I from 16.08.2010 at Hyderabad and then promoted as Principal Scientific Officer from 18.05.2017 at Ahmednagar.

2(b) . It has been claimed that he has never been keen on posting at particular station and has accepted all the transfers without any protest.

2(c) . The respondents issued Transfer Policy for Group 'A' officers of DGQA on 24.11.2016 (Annex-A-3), according to which tenure of an officer at a

particular station is of 5 years, inclusive of period of service rendered in lower rank at the same station. The applicant has completed more than 5 years at Ahmednagar station after his posting there since 28.04.2014. By letter dated 21.01.2019, the respondents asked to submit by 20.02.2019 three station choices as preferences for posting.

2(d). He claims to have submitted three choice stations in the prescribed format for posting as SQAE (EE) Mumbai, CQA (SV) Pune and CQA (EE) Pune. Then he submitted a representation on 11.02.2019 pointing out that his wife is a Teacher in Zilla Parishad Primary School, Ahmednagar i.e. she is a State Government of Maharashtra employee and requested to consider his case for posting him at a nearby station. In the representation he mentioned his third choice of station as New Delhi.

2(e). He has further stated that subsequently he was diagnosed with borderline Positive TMT, Angina, Hypothyroidism and was admitted in emergency in Ruby Hall Clinic, Pune on 02.05.2019 and was discharged on 06.05.2019.

2(f). In pursuance to the rotational Transfer Policy, 2016, the respondents issued order on 19.07.2019 transferring him from CQA (V),

Ahmednagar to HQ, DQA (V), New Delhi (impugned order at Annex-A-1). Then he submitted a representation on 28.07.2019 requesting for his posting at Pune or Mumbai as per Para 8(e) of the RTP which stipulates that husband and wife be posted at the same station and also mentioned about his ill-health. Respondent No.4 i.e. Controller, Controllerate of Quality Assurance (Vehicles), Ahmednagar recommended his case to Respondent No.2 i.e. DGQA, Sena Bhawan, New Delhi, but the Respondent No.2 rejected the request by order dated 28.08.2019 stating that his request had not been accepted by the Competent Authority and he was advised to move forthwith (Annex-A-10).

2(g). Being aggrieved of that action of the respondents, he filed O.A.629/2019, which was disposed of by order dated 16.09.2019 quashing and setting aside the order dated 28.09.2019 and directing the respondents to pass a reasoned and speaking order on the representation already filed by the applicant and till then, he was not to be disturbed from the present posting, if not relieved by then (Annex-A-11). In pursuance of that order of the Tribunal, the respondents have issued the order dated 11.10.2019 (Annex-A-2) rejecting his request. Being aggrieved of that order, the

present O.A. has been filed.

3. Contentions of the parties:

In the O.A., rejoinder filed on 13.01.2020 and during arguments of his counsel on 14.01.2020, the applicant has contended that -

3(a). the impugned orders dated 19.07.2019 and 11.10.2019 are absolutely illegal, arbitrary and ab-initio void. Foremost reason for setting aside the impugned orders is violation of Para 8(e) of the Transfer Policy of the respondents dated 24.11.2016 which deals with posting of husband and wife at the same station;

3(b). in spite of vacancies available at Pune the respondents have not considered his case for posting there as provided in DOPT OM dated 30.09.2009 according to which the spouse employed under the Central Government may apply to the Competent Authority who may post the said officer to the station or if there is no post in that station, to the State where the other spouse is posted. The respondents have not considered the most important point i.e. balancing the interest of the employee while transferring him. His wife is working in Zilla Parishad School which comes under the State Government of Maharashtra. Thus the respondents clearly committed a breach of the DOPT OM;

3(c) . the rotational Transfer Policy of the respondents dated 24.11.2016 mentions that case of spouse will be considered on the basis of DOPT OM issued from time to time. Therefore, on this ground alone, the impugned orders deserve to be set aside;

3(d) . the applicant's one son is studying in 9th Standard and another in 1st standard and his request at this stage deserves to be considered in line with the above DOPT OM;

3(e) . the DOPT OM dated 30.09.2009 also stipulates that representations preferred against non-compliance of instructions contained in that OM are to be decided by authorities atleast one level above the authorities which took the original decision. In the order of the respondents it is not mentioned that his representation was referred to the higher authorities and who considered and rejected it. He apprehends that the impugned order of the respondents has not been approved even by the authority who has actually passed the original order of his transfer;

3(f) . his original order of transfer was approved by the Joint Secretary of the department and the authority higher to him is the Secretary of the Department to whom his representation should

have been submitted but it has not been approved even by the Joint Secretary;

3(g). in identical case of Dr.Umakant Mishra in O.A.404/2018, a coordinate Bench of this Tribunal at Cuttack set aside the transfer order holding that his case for transfer on the ground of spouse's posting was required to be considered in light of DOPT OM dated 30.09.2009 which had not been done in that case and, therefore, directed the respondents to reconsider his case as per Para 6 of the DOPT OM keeping in mind choices of posting submitted by the applicant therein (Annex-A-16). A similar relief deserves to be extended to the present applicant also;

3(h). the applicant had submitted his choices of stations as SQAE (EE) Mumbai, CQA (SV), Pune and CQA (EE), Pune, but when he was informed that it is mandatory to give three choice stations and Pune would be treated as only one station, he submitted his third choice of station as New Delhi. But the respondents have not considered his first two choices of stations and have directly considered his third choice of station (New Delhi) and posted him there;

3(i). the contention of the respondents is not correct that the applicant has completed five years

of service at Ahmednagar and posting him in another AHSP of the RTP would have violated provisions of Para 8(f) of the RTP thereby depriving the applicant of exposure of higher Headquarters essential for his career progression. It is a totally misconceived reason given by the respondents. One Shri Bala Shanmugam M and Shri R.P. Sonawane have been transferred from one AHSP to another AHSP by considering their first choices of stations and that too without any compassionate grounds. There are senior officers more experienced and having greater exposure than the applicant but even then they have not been posted to Headquarters;

3(j). there were six vacancies in Pune and one in Mumbai when meeting of collegiate was held on 26.03.2019 and, therefore, the contention of the respondents that there was no vacancy available at Mumbai is not correct. One Shri U.R. Raja was transferred from Mumbai to Pune by order dated 31.01.2019 and the respondents have submitted in their reply incorrect and misleading facts and on this ground also, the present O.A. deserves to be allowed;

3(k). the applicant has heard for the first time about Defence Export Promotion Scheme and has no

clue whatsoever as to what is the drive of the said scheme and he has no experience about the scheme. Two other senior officers having more exposure and experience than the applicant have been posted to stations of their first choice i.e. Medak. At HQ (New Delhi) only one post is vacant, thus the workload there is less as compared to other stations preferred by the applicant. He has sought posting at station of his choice for the first time in his service career because of compelling facts and circumstances;

3(1). the applicant was recently admitted in Hospital from 14.09.2019 to 18.09.2019 and was diagnosed with transient Cerebral ischemic unspecified (Annex-A-19). His mother is 65 years old and the respondents have admitted this when they stated that medical facilities for him and his mother are available at Delhi also;

3(m). Principal Bench of the Tribunal in its order dated 18.12.2014 in O.A.11/2014 (case of Pawan Kumar Vs. Union of India) considered the question in dispute i.e. when Transfer Policy is not implemented in right perspective and held that once the policy is issued by the organization, it is meant to be implemented to regulate the transfers and posting so far as it is practicable

(copy at Annex-A-21). Gujarat High Court decision in Dipika Kantilal Shukla Vs. State of Gujarat and others dated 28.02.2006, also held that when the employer has framed certain guidelines with clear intention, then the action of the concerned authority should have a reasonable nexus with objectives sought to be achieved;

3(n). the applicant is not seeking retention at Ahmednagar and has sought posting at nearby station i.e. Pune or Mumbai. Hence the contention of the respondents is not correct that the applicant has been at Ahmednagar for 14 years of his service. The applicant had submitted his application dated 05.11.2012 for posting on compassionate grounds and he was not having liberty of bargaining with the respondents for considering his application for posting to Ahmednagar, which on compassionate grounds was also approved after 1 year and half for his application.

The respondents could have transferred him after completing three years of his posting at Ahmednagar but they did not transfer him. Therefore, the validity of the undertaking given for a limited period of three years for not representing against the transfer came to an end as soon as the order of his promotion and posting at

Ahmednagar was issued in 2017. The respondents cannot take stand simultaneously that in view of his undertaking, he cannot represent for posting at Pune or Mumbai and he has been posted at New Delhi as per his own choice. Therefore, the contention of the respondents is an afterthought. While rejecting his request by order dated 11.10.2019, the respondents did not mention about the certificate/undertaking submitted by him in 2012 and by shouting now before this Court as the main ground, they cannot seek vacation of the interim relief and dismissal of the O.A;

3(o). after submitting his application dated 11.02.2019, his health condition deteriorated because of which he was admitted in hospital for almost two times and because of his health condition, one of his relatives approached the Member of Parliament, Ahmednagar, requesting to recommend his posting at a station nearby Pune and, therefore, the letter was forwarded by the Member of Parliament recommending his case to the Hon'ble Raksha Mantri, which was rejected vide letter dated 18.09.2019. That reply of the Hon'ble Raksha Mantri to the Member of Parliament was not conveyed to the applicant. The recommendation by the Member of Parliament was not by violating rules and

regulations and it was not intention of the applicant to bring political influence. But before receipt of that reply, he had already approached the Tribunal for redress of his grievance;

3(p). the applicant has more than 17 years of service left and the respondents have ample opportunity to transfer him in future for his career progression but not at this juncture;

3(q). it is the applicant's case that the present transfer order is an outcome of malafide exercise of power by the respondents and violative of statutory provisions issued by the Government of India and the order rejecting his request has been passed by an incompetent authority. The respondents cannot add, alter or modify the provisions of the Rotational Transfer Policy as per their own wish and whims. In the recommendation of the Member of Parliament for his posting, neither it was stated that the case of spouse is to be considered nor the rejection of the request has been mentioned that the spouse ground was considered. Therefore, the respondents' viewing the recommendation in his favour by the M.P. as misconduct of bringing political influence is not correct;

3(r). the applicant has already served in Kolkata, Jamshedpur, Hyderabad and Ahmednagar, he can be given exposure at another station before posting him to the Headquarters. One Dr. Gurmukhdas, was posted at Mumbai but his transfer has not been carried out and the post is still vacant. As held by the Apex Court, there should be three conditions to interfere in the transfer orders i.e. order passed by the incompetent authority, order passed out of malafide intention and violation of statutory provisions. The applicant submits that there were vacancies available at Pune and Mumbai when his request was rejected, there are genuine health related issues of the applicant and he has been working with devotion to duty and hard work, but with malafide intention, the respondents have down-graded his grading from 7 to 6 in the APAR for the last two years. Therefore, the O.A. should be allowed.

In the reply and during arguments of their counsel on 14.01.2020, the respondents have contended that -

3(s). the applicant has been posted at Ahmednagar since 28.04.2014, and he has been posted there for 14 years and 2 months out of 21 years of service as Group 'A' officer with the Director

General, Quality Assurance. He was moved out of Ahmednagar only when he had to take up posting on direct recruitment as Junior Technical Officer (Group 'B') and Senior Scientific Officer-I in 2007 and 2010 respectively. On his recruitment as Senior Scientific Officer-I he was posted to MSQAA, Hyderabad from 16.08.2010 but after having served there only two years and four months he applied on 19.12.2012 for posting at Ahmednagar on compassionate grounds citing his mother's treatment at a hospital in Ahmednagar and his wife being a Teacher in Zilla Parishad Primary School. Along with that application he also gave a certificate that in the event of his compassionate posting being granted, it would be for three years and after that he may be posted to any unit and he will not represent;

3(t). based on his that request, he was prematurely posted at Ahmednagar on 16.04.2014 after completing only three years and eight months at Hyderabad as against required tenure of 5 years. The respondents were also considerate enough not to post him out of Ahmednagar after 3 years as per the certificate given by him on 19.12.2012 when he was promoted as Principal Scientific Officer in 2017 and was allowed to complete his station tenure at

Ahmednagar itself for 5 years;

3(u). after having completed his station tenure at Ahmednagar in terms of the Rotational Transfer Policy of the Ministry of Defence dated 24.11.2016, he submitted three choice stations in his application dated 11.02.2019 as Pune, Mumbai and New Delhi and also requested to consider posting him to Pune once again citing the same reasons for which he had been allowed the transfer in 2012 from Hyderabad to Ahmednagar;

3(v). the collegiate in its meeting held on 26.03.2019 finalized the posting proposals for 2019 under RTP and after due consideration to the applicant's choice stations for posting, career progression and organizational interest, posted him to one of his choice stations i.e. New Delhi as per para 9(a) and 8(f) of the RTP. The proposal of the collegiate was approved by Secretary (Defence Production), Department of Defence Production, Ministry of Defence, Government of India and the applicant was posted at Headquarters, Directorate of Quality Assurance (Vehicles), New Delhi vide order dated 19.07.2019;

3(w). the applicant submitted his representation dated 28.07.2019 to DGQA against the posting order requesting to be posted near Ahmednagar i.e. at any

establishment at Pune or Mumbai. His request was not accepted by the Competent Authority and he was informed accordingly by letter dated 28.08.2019. However, simultaneously he approached Dr.Sujay Radhakrishna Vikhe Patil, Hon'ble Member of Parliament (Lok Sabha) to help him to get posted in a Defence Establishment near Pune city, who wrote to the Hon'ble Raksha Mantri on 28.07.2019 to consider his posting sympathetically. The latter replied to the Member of Parliament on 18.09.2019 that his request to post the applicant at Pune / Mumbai has not been found feasible. This act of the applicant to bring political influence upon superior authorities to further his personal interest in respect of matters pertaining to his service under the Government is in gross violation of CCS (Conduct) Rules;

3(x). being aggrieved of the reply dated 28.08.2019, he also filed O.A.629/2019 to get quashed and set aside the orders dated 19.07.2019 and 28.08.2019 and to consider his posting at Pune or Mumbai. That O.A. was disposed of by order dated 16.09.2019 with direction to the respondents to pass a reasoned and speaking order on his representation dated 28.07.2019. His that representation was examined as per the Rotational

Transfer Policy dated 28.11.2016 and other material available on record and a reasoned and speaking order has been issued on 11.10.2019 rejecting his request. But now the applicant has again filed the present O.A. challenging the orders dated 19.07.2019 and 11.10.2019;

3(y). the applicant has completely violated his certificate dated 19.12.2012 submitted along with his application for compassionate posting from Hyderabad to Ahmednagar wherein he had undertook that in the event of his compassionate posting being granted, it would be for a period of three years and after that he may be posted at any unit and he will not represent. But after his transfer order dated 19.07.2019, he has not only represented to the Department, he has also approached the Member of Parliament and filed the present O.A. before this Tribunal thereby violating his undertaking;

3(z). as held by the various Apex Court Benches from time to time, in case of posts carrying all India service liability in Government or public sector undertakings, it is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred. The transfer is not only an incident

but essential condition of service. It does not affect the conditions of service in any manner and the employee does not have an inherent right to be posted at a particular place, unless the transfer order is vitiated by malafide or is made in violation of statutory provisions.

3(za). The present O.A. is not maintainable because the applicant's transfer is a part of rotational transfers undertaken by the respondents every year and many officers have been transferred. It is not an outcome of a malafide exercise of power or violative of any statutory provisions (Act or rules) and it has not been passed by an authority who is not competent to do so. But the applicant has tried to misuse the process of law and attempted to derail the smooth functioning of the organization and waste of prestigious judicial time and manpower and thereby causing loss to exchequer. The posting order of the applicant is necessarily in public interest and for bringing efficiency in the administration;

3(zb). the averments of the applicant in para 1 of the O.A. are false, frivolous, baseless, unsubstantiated and, therefore, are denied. The applicant himself had submitted 3 choices of stations for his posting in his letter dated

11.02.2019 i.e. Pune, Mumbai and New Delhi, and therefore, on considering his choice stations, career progression and organizational interest, the applicant has been posted at New Delhi. The applicant had already completed station tenure of 5 years at AHSP, Ahmednagar before his transfer order was issued. His posting at Pune would have violated the provisions of Para 8(f) of the rotational policy which stipulates that postings/transfers may be made in such a way that the officer gets wider exposure. Thus posting him to Pune would have deprived him of the exposure of working at the Headquarters which is essential for his career progression;

3(zc) . when the collegiate met to finalize the rotational transfers for 2019, there was no vacancy available at Mumbai and since a number of schemes launched by the Ministry of Defence are headquarters-centric, the workload has increased requiring maximum strength of Group-A officers to be posted there. The applicant has been earmarked to look after the Defence Export Promotion Scheme due to his rich exposure at AHSP of vehicle directorate. Thus there was inescapable requirement of the applicant to be posted at the headquarters, New Delhi and his posting at Pune or

Mumbai was not feasible. Para 8(e) of the Rotational Transfer Policy is applicable when the husband and wife are posted in different stations but the applicant and his wife have been posted together at Ahmednagar for last 5 years and 8 months. The applicant's concern for his own treatment and that of his mother may be effectively addressed at New Delhi as medical facilities there are equally good or even better than those in Pune or Mumbai;

3(zd). the proposal of collegiate was approved by the Secretary (Defence Production), Department of Defence Production, Ministry of Defence and his representation against the posting order dated 19.07.2019 has been disposed of by the Hon'ble Raksha Mantri on 18.09.2019 informing that his request to post him at Pune and Mumbai has not been found feasible (copy at Annex-R-3). The averments made by the applicant in Para 2, 4.1, 5(b), 5(c) and 5(e) of the O.A. are untenable, misconceived and liable to be rejected. The present O.A. has the same prayer as was in O.A.629/2019, which had already been disposed of by the Tribunal and, therefore, this O.A. is liable to be rejected for approaching the Tribunal with unclean hands;

3(zc) . the applicant did not submit his application in the prescribed format and gave 3 choices i.e. Mumbai, Pune and New Delhi. It was only in his application dated 11.02.2019 that he gave choices of three stations as Pune, Mumbai and New Delhi. His posting was approved by the Secretary, Defence Production and not by Joint Secretary as wrongly claimed by him;

3(zf) . the case of the present applicant is not similar to that of Dr.Umakant Mishra. In his representation to Director General Quality Assurance, he had not made any complaint against the respondents. Shri Bala Shanmugam M and Shri R.P. Sonawane had already served at the headquarters, New Delhi, and Directorate of Quality Assurance, Avadi from July, 2012 to July, 2014 and March, 2007 to July, 2012 and both of them have been posted to one of their choice of stations at Medak and not at the station of their first choice. They have been posted there because of their special knowledge of Combat Vehicles. Shri Dr.Gurmukhdas, Principal Scientific Officer was posted from Pune to Mumbai on 22.03.2019 and, therefore, when the collegiate met to finalise the transfers for 2019 on 26.03.2019, there was no vacancy of Principal Scientific Officer in Mumbai.

The case of Pawan Kumar Vs. Union of India was different from the case of the applicant.

3(zg). The respondents have relied on the following caselaws to support their contention:

(i). In case of **State of U.P. Vs. Gobardhan Lal** dated 23.03.2004 reported in AIR 2004 SC 2165, the Apex Court held that -

"No Govt can function if the govt 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. A Govt servant has no vested right to remain posted at a particular place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to other. 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 absence of any specific indication to the contrary, in governing conditions of service.

Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provisions (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers, or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their

higher authority for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career progress such as seniority, scale of pay and secured emoluments.

The 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 malafide or is made in violation of any statutory provision. A challenge to an order should normally be eschewed and should not be countenanced by the Court or Tribunal as though they are Appellate Authorities over such orders, which could assess the niceties of administrative needs and requirements of the situation concerned. This is for the reason that Court or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegation of malafides 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."

(ii). In case of **Shilpi Bose & Ors. Vs. State of Bihar & Others (AIR 1991 SC 532)**, the Apex Court

held that -

"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 grounds of malafide. 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. The High Court overlooked these aspects in interfering with the transfer orders."

(iii). In **Gujarat Electricity Board & Anr Vs.**

Atmaram Sungomal Poshani, 1989 AIR 1433, the Apex

Court held that -

"Transfer of a government servant appointed to a particular cadre of transferable posts from one place to another is an incident of service. No government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is a general condition of service and the

employee has no choice in the matter. 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 orders, but if there be any genuine difficulty in proceeding on transfer, it is open to him (employee) to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer."

(iv). In **Union of India & Ors. Vs. HN Kirtania**,

1989 AIR 1774, the Apex Court held that-

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafides."

(v). In case of **Pawan Jindal Vs. Union of India & Ors.** In OA.No.1339/2017 dated 25.04.2017, the

CAT, Principal Bench, New Delhi held that -

"The prayer in the OA is for quashing of the order dated 24.03.2017. The application does not make it clear, even in the applicant's case, why his transfer needs to be cancelled. Needless to say, this OA is not maintainable as the applicant has failed to satisfy this Tribunal why his transfer should be quashed and secondly, he has no locus standi as an individual to question the transfer of other officials. In any case, this is not an individual transfer

and it is a rotational transfer, which is undertaken every year and large number of people have been transferred. This is an attempt by the applicant to derail the smooth functioning of the organisation and waste precious judicial time and manpower. There is no ground why the Tribunal should interfere in the matter. The OA is, therefore, dismissed. We impose a cost of Rs.10,000/- on the applicant to be paid to the respondents within a month."

(vi). In case of **Gautam Singh Vs. Union of India & Ors.** In OA.No.1310/2017 dated 25.04.2017, the CAT, Principal Bench, New Delhi held that -

"Of late, we have seen responsible Government servants rushing to the Tribunal against legitimate transfers after decades of posting at one place on some pretext or the other. Needless to say that in case the Tribunal starts interfering in such routine administrative functions and stay or cancel such transfers, it would create serious problem for the administration to deliver to the people of India. It is a pity that a well educated Government servant such as the applicant, knowingly entering into service with all India liability, after being transferred for the first time in 25 years, refuses to obey the order by creation of some technical ground, attempted to stall such transfer, wasting the time of this Court and, therefore, money from the public exchequer. This is deplorable conduct on the part of the applicant. We impose a cost of Rs.25,000/- (Rupees Twenty Five Thousand) on the applicant and dismiss the OA. The cost shall be paid to the respondents within a period of one month."

In view of these, the O.A. should be dismissed.

4. Analysis and conclusions:

4(a). We have carefully considered the OA along with its annexes, particularly DOPT OM dated 30.09.2009, posting/transfer policy in respect of Group-A officers of DGQA dated 24.11.2016, rejoinder filed by the applicant on 13.01.2020, reply filed by the respondents along with its annexes. We have also perused the caselaws cited by the parties and have considered the rival contentions of the counsels for the parties. Based on this, the case is analysed as follows:

4(b). The main issue for decision of this OA is whether the applicant makes out a justified case for setting aside the order of the respondents dated 19.07.2019 transferring him from CQA (V), Ahmednagar to Headquarters, DQA (V), New Delhi and the rejection of his representation dated 28.07.2019 against that transfer order. The applicant claims that -

- (i).** he has never been keen on posting at a particular place (page 3 and 4 of the OA);
- (ii).** his wife is a teacher in Primary School of Zilla Parishad, Ahmednagar and an employee of Government of Maharashtra (para 4.4, page 5) and,

therefore, he should be posted only to a nearby station;

(iii). his transfer was approved by Joint Secretary in the Department of Defence Production and his representation has not been decided/approved by an authority higher than the Joint Secretary; and

(iv). his transfer is illegal and against the policy of the respondents notified on 24.11.2016 and also against DOPT guidelines dated 30.09.2009. However, our consideration of facts of the case reveal (as explained in next paragraphs) that all these claims of the applicant are false and misleading.

4(c). The applicant had himself sought his transfer in 2012 from Hyderabad to Ahmednagar on compassionate grounds and thereafter he was retained at Ahmednagar even on his promotion in 2017. The applicant himself had represented on 28.07.2019 for posting him at a station nearby Ahmednagar i.e. at an establishment at Pune or Mumbai against the transfer order issued by the respondents on 19.07.2019. Not only that he also approached the Member of Parliament, Ahmednagar (Dr.Sujay Radhakrishna Vikhe Patil) and got submitted a recommendation in his favour to the

Hon'ble Defence Minister for posting him to an establishment in Pune.

4(d). He also filed earlier O.A.629/2019 challenging the transfer order of 19.07.2019 which was decided on 16.09.2019 directing the respondents to consider his representation dated 28.07.2019 and till it is decided, not to disturb him from the present posting. Thereafter the applicant has again filed the present OA challenging the same transfer order again as well as the reply of the respondents to his representation dated 28.08.2019. This clearly disproves the applicant's claim that he has never sought posting at a particular station. School Teachers posted with Primary Schools under a Zilla Parishad are employees of the concerned Zilla Parishad and not of the State Government of Maharashtra. Since applicant's wife is a School Teacher in Primary School of Ahmednagar Zilla Parishad, she is an employee of Zilla Parishad, Ahmednagar and not of the State Government of Maharashtra. Therefore, the claim that she is a Government of Maharashtra is also false.

4(e). His claim that his transfer was approved by the Joint Secretary in the Department of Defence Production is also false in view of the clear

submissions of the respondents in their reply that the proposal of the collegiate based on its meeting on 26.03.2019 was approved by the Secretary (Defence Production), Department of Defence Production, Ministry of Defence, Government of India. His subsequent representation submitted to the Hon'ble Defence Minister through the Member of Parliament has also been considered and rejected by the Hon'ble Defence Minister as is clear from his reply dated 18.09.2019 to the Member of Parliament. This shows that neither applicant's transfer dated 19.07.2019 was approved by the Joint Secretary in the Department of Defence Production nor his representation has been rejected by the Joint Secretary.

4(f). As per Para 4(vii) of the DOPT OM dated 30.09.2009, where one spouse is employed under the Central Government and the other spouse is employed under the State Government, the spouse employed under the Central Government may apply to the competent authority who may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted.

Para 5 of that OM also stipulates that when the cadre controlling authority is not able to

post the employee at the station of the spouse, specific reasons may be communicated to the employees.

Para 6 of the OM also stipulates that representation/complaints against non-adherence to the instructions should be decided by the authorities atleast one level above the authorities which took the original decision when they are below the level of Secretary to the Government of India or Head of the PSU concerned. In the posting / transfer policy of Group-A officers of DGQA notified by the Department of Defence Production on 24.11.2016 Para 8(e) stipulates that for posting of husband and wife at the same station will be considered as per the instructions/guidelines issued by the Government of India on the subject from time to time.

Para 8(f) of the policy further stipulates that posting / transfer of an officer is to be made in such a way that officers get to serve one tenure each at a AHSP/SQAE/Field Unit for wider exposure to the officer.

Para 10(d) of the policy also stipulates that request of an officer for retention at a station maximum by one year may be considered on grounds of education of his/her children once in

entire service career.

4(g). As explained by the respondents, after having served for two years and four months at Hyderabad as Sr. Scientific Officer-I, the applicant applied on 19.12.2012 for compassionate posting at Ahmednagar stating his mother's treatment in hospital at Ahmednagar and his wife being a teacher in Zilla Parishad Primary School, Ahmednagar. Along with that application, he also gave a certificate that "in the event of his compassionate posting being granted, it would be for a period of three years and after that he may be posted to any unit and he will not represent."

A copy of that certificate is page 125. However, in spite of this clear certificate/undertaking dated 19.12.2012, the applicant has challenged his transfer order issued by the respondents dated 19.07.2019, thereby violating his own undertaking.

4(h). In his rejoinder he has attempted to give a very strange and false interpretation to that undertaking saying that it was given for a limited period after which its validity has no value. Since the respondents did not transfer him after completing three years at Ahmednagar after his transfer on compassionate grounds in 2012, validity of that undertaking of three years came to an end

when he was promoted in 2017 and retained at Ahmednagar.

4(i). The respondents have further explained that he was to give preferences for three stations of choice in January, 2019 but with letter of 21.01.2019, he submitted choice of only two stations i.e. Mumbai and Pune and only on being reminded for giving preference for three stations, he submitted three preferences as Pune, Mumbai and New Delhi in his letter dated 11.02.2019. This shows that he did not even bother to submit the preferences of stations of his choice in the proper format. Thus his claim in the O.A. (Para 4.4, page 5) that he submitted three choices of SQAE (EE) Mumbai, CQA (SV) Pune and CQA (EE) Pune is wrong and misleading. While the applicant has been insisting through his representations to be posted to a station close to Ahmednagar i.e. in an Establishment at Pune but when he himself has also gave a choice for Mumbai, he seems to have been oblivious of his concern for being posted at a station close to the place of posting of his spouse.

4(j). The submission of the respondents that in spite of submitting his own representation dated 28.07.2019 to the DGQA, Sena Bhawan, New Delhi, on

the same date he also approached the local Member of Parliament (Lok Sabha) and got a request submitted by him to the Hon'ble Defence Minister recommending his case for posting in Defence Establishment nearby Pune City because of illness of his old mother and family problems. In that recommendation of the M.P., there was no mention of the applicant's health problems.

4(k). The submission of the respondents is correct that the applicant not only violated his own certificate/undertaking dated 29.12.2012, not representing, he also brought political influence on the respondents by approaching the local M.P. and getting submitted recommendation in his favour for posting at Pune. This was clearly a violation by the applicant of the relevant service conduct rules. For this, whether any disciplinary action has been initiated against the applicant has not been brought on record. These submissions of the respondents are correct and fully justified.

4(l). We have also find that even when the applicant was promoted as Principal Scientific Officer in 2017, the respondents were very considerate to him and retained him at Ahmednagar only and they have transferred him only after completing a tenure of five years and eight months

at that station. In view of these facts, the claim of the applicant that the order of his transfer is illegal and in violation of the DOPT OM and of Rotational Transfer Policy of the Department of Defence Production is false, it has no justification.

4 (m). In view of the respondents being considerate enough for him, the applicant's allegation of malafide intention against the respondents is utterly false. The representation of the applicant dated 27.07.2019 has also been considered by the respondents in detail and requirement of his service at the Headquarters particularly in view of new scheme of the Ministry i.e. Defence Export Promotion Scheme for which he has been posted due to his earlier exposure to AHSP activities is clearly in organizational interest and for his wider exposure at the Headquarters which is essential for his own career progression. It is also a fact that when his transfer was recommended by the collegiate on 26.03.2019, there was no vacancy available at Mumbai in view of posting of another officer there a couple of days earlier.

This justification of the respondents is genuine and fully justified the transfer of the

applicant.

4(n). A perusal of discharge summary dated 18.09.2019 issued by the Ruby Hall Clinic, Pune also shows that in MRI scan of brain and angiography, no significant abnormality was detected. Therefore, the claim of the applicant about his sickness also does not seem reliable.

4(o). As explained by the respondents the facts of the present case do not seem to be identical with that of the caselaw cited by him (Dr.Umakant Mishra). We also observe that in Para 10 of his rejoinder (page 180), the applicant has used an undesirable language stating that the respondents have not at all given any single whisper about certificate or undertaking while rejecting his request by order dated 11.10.2019 and now shouting before this Court of law as main ground not only to vacate the interim relief but also to dismiss the OA without going into the merits of the case.

4(p). We also notice that the order of transfer of the applicant issued by the respondents establishes a clear nexus with the organizational objectives to be achieved. When analyzed in the perspective of the Apex Court decisions cited by the respondents, we find full justification in the action of the respondents and no substance in the pleas taken by the applicant in this O.A.

4(q). Further as per the Apex Court view in the case of **S.C. Saxena Vs. Union of India and others**, reported in 2006 STPL 4131 SC, that in the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is the duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be cured.

But instead of joining at the new place of posting after his transfer as a senior officer, not only the applicant did not join but he has flouted the instructions of the concerned respondent authorities and his own earlier undertaking by repeatedly challenging the order first in O.A.629/2019 and thereafter again in the present O.A.

In view of the utterly false and misleading claims submitted by the applicant on a number of issues, we conclude that the present O.A. is totally devoid of merit and it deserves not only dismissal but dismissal with cost.

5. Decision:

The O.A. is dismissed, with a cost of Rs.10,000/- to be paid by the applicant to the respondents within one month of receipt of copy of this order. The interim relief granted earlier stands vacated.

(R.N. Singh)
Member (J)

Dr. Bhagwan Sahai)
Member (A).

H.