

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2031/96
T.A. No.

199

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DATE OF DECISION 04.07.1997

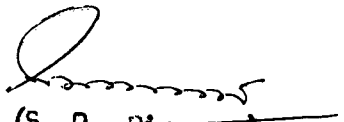
Sh. G.M. Chaula _____ Petitioner
Sh. G.D. Gupta _____ Advocate for the Petitioner(s)
Versus
U. O. I. & Ors. _____ Respondent
Sh. R.P. Aggarwal _____ Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Jose P. Verghese, Vice-Chairman (J)

The Hon'ble Mr. S. P. Biswas, Member (A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?


(S. P. Biswas)

Cases referred:

1. Shilpa Bose Vs. Govt. of India (AIR 1991 SC 532)
2. State of Punjab Vs. Joginder Singh Bhat (AIR 1993 SC 2486)
3. UOI Vs. S. L. Abbas (AIR 1993 SC 2444)
4. UOI Vs. N. K. Samat (AIR 1993 SC 1605)
5. N. K. Singh Vs. UOI 'JT 1994 (5) SC 298)
6. Shantikumari Vs. Regional Dy. Director Health Services (AIR 1981 SC 1577)
7. UOI Vs. H. N. Kirtania (1989 (11) ATC 269)
8. State of MP Vs. S. S. Kaurav (1995 SCC (L&S) 666)
9. Rajendra Roy Vs. UOI (1993 SCC (L&S) 138)
10. P. Damodaran (Dr) Vs. State of Kerala (1982) 1 SLR 563)
11. Bank of India Vs. J. S. Mehta (1992) 1 SCC 306
12. J. K. Dave Vs. State of Gujarat (30 (1) GLR 571)
13. Manager, Govt. Branch Press Vs. D. B. Belliappa (1979) 15 CC 477)
14. Express Newspapers Pvt. Ltd. Vs. UOI (1986) 15 CC 133)
15. Sankaranarayanan Vs. State of Karnataka (1993) 1 SCC 54)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 2031/1996

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New Delhi, this the 4th day of July, 1997.

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri G.M. Chawla
s/o late Shri Asa Nand Chawla
EC-62, SFS, Maya Enclave, New Delhi-64 Applicant

(By Advocate Shri G.D. Gupta)

versus

Union of India, through

1. Secretary
Ministry of Power
Shram Shakti Bhavan, Rafi Marg
New Delhi
2. Chairman
Central Electricity Authority
Sewa Bhavan, New Delhi
3. Shri M.I. Beg
Chairman
Central Electricity Authority
Sewa Bhavan, New Delhi

(By Advocate Shri R.P. Aggarwal)

ORDER

Hon'ble Shri S.P. Biswas

In this application filed under Section 19 of the Administrative Tribunals Act 1985, the applicant, presently working as Director, Hydro Planning and Investigation in Central Electricity Authority (CEA for short), New Delhi, has challenged A1 & A8 orders dated 22.1.96 & 16.2.96 respectively by which he has been transferred in the same capacity as Superintending Engineer, (SE for short) Eastern Regional Electricity Board (EREB for short)/Calcutta and relieved from the present post. Consequently, he has prayed for quashing these orders. The applicant is a mechanical engineer

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initially appointed as Technical Assistant in CEA in March, 1968 and has obtained several promotions including the last one as Director on 28.1.92. He continues at Delhi for the last 28 years.

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2. Shri G.D. Gupta, learned counsel for applicant argued strenuously to say that whenever Directors are posted/transferred to field units, they are designated as S.E. and such transfers to Field Units outside Delhi are based on the following guidelines, though there are no transfer policy as such in the CEA:

- (i) Options obtained from officers. This is evidenced through A-2 circulars dated 24.3.93 and 12.3.93 and appears to have been followed while issuing order dated 16.8.96;
- (ii) For providing field experience to Directors who did not have the background of working at grass root levels as per rules for promotion to the higher post of Chief Engineer;
- (iii) On the basis of seniority;
- (iv) On suitability based on the area of specialisation of the officer concerned;
- (iv) On humanitarian consideration.

3. The applicant would submit that his case does not fall in any of the aforesaid criteria and A-1 order has been issued in violation of the norms prescribed. This itself shows that the transfer of the applicant was not in normal course or in exigencies of service, the counsel would contend.

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4. Applicant has raised the plea of discrimination in the sense that officer/officers (Mr. M.C. Juneja) transferred in August 1996 has not been relieved for months, whereas he was relieved within 4 weeks and that too during the medical leave period.

5. The main plank of applicant's attack is that the transfer order is actuated by "malafides" only on the part of Respondent No.3 (R-3 for short) - Sri M.I. Beg, Chairman/CEA. Specific charges levelled against the above officer have been sought to be established on the following grounds:

(A) Functional requirements of the EREB/Calcutta is for an electrical engineer with relevant experience in power system/grid operation. As a mechanical engineer the applicant cannot be said to be most suitable for the post at EREB/Calcutta. That apart, there are no posts of Superintending Engineer vacant at EREB/Calcutta, inasmuch as one C.R. Bhowmik, Director/SE is working at EREB/Calcutta by being adjusted against the post of Director of the Hqrs./New Delhi. Though, there is no requirement of any other SE at Calcutta as against one sanctioned post of SE, two officers namely S/Shri Anjan Roy and C.R. Bhowmik

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were already working there. Yet even before Shri S. Mukherjee retired from service w.e.f. 31.1.1996, the applicant was transferred by the impugned order.

(B) Applicant alleges malafide against R-3 as he found that R-3 was against him in all his dealings with him as the applicant was known to be the man of earlier Chairman Shri Y.P. Gambhir under whom the applicant had worked for a long time. R-3 did not have good relations with Shri Gambhir. By the order dated 6.7.95, the applicant was required to conduct a fact finding enquiry in regard to certain irregularities which had been noticed in the work order relating to construction of a toilet in Chairman's office. The report was actually submitted by the applicant on 16.11.95 well before the target date. The applicant noticed serious procedural irregularities having been committed right from the date of initiation of the proposal like issue of quotations, receipts, opening and award of the contract for the aforesaid work. Instead of taking action on the report against

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the officers found guilty of irregularities, the Chairman transferred the applicant to Calcutta by the impugned order dated 21.1.96. Malafide on the part of R-3 would further be clear from the fact that after the fact finding enquiry report was submitted by the applicant on 16.11.95, the applicant who was member of the Committee formed for the procurement of Audio-Visual System for the CEA was removed (Annexure A9) from the membership of the said Committee on 29.11.95 without assigning any reason. This happened hardly 13 days after submission of the report. Respondent No.3 had personally approved A9 proposal. The said committee was formed only on 20.10.95 (Annexure A10).

- (C) Applicant saw Respondent No.3 immediately after the transfer order and having failed to receive any relief, a representation was made to Secretary(P) and to Hon'ble Minister of State Power (MOS)(P) for short). Vide communication dated 8.2.96, the Ministry asked for comments of CEA in this matter. Instead of detailed comments, a cryptic reply dated

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22.2.96 was sent to the Ministry saying that "the transfer of Shri G.M. Chawla, Director from CEA Headquarters to EREB, Calcutta is purely on administrative grounds and in public interest." But before comment was received by the Ministry the applicant was relieved on 16.2.96.

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(D) As per orders of MOS(P) in March, 1996, the applicant was to be retained at the headquarters. And yet the transfer order was not cancelled. Following MOS(P)'s order, the Ministry called for a report again in middle of March 1996 but it did not yield any result till 31.7.96 and that too because of intervention of Prime Minister's office on 5.7.96. The learned counsel for the applicant argued that because of inordinately delayed report to the Minister of State for Power, the cadre controlling authority could not dispose of applicant's representation in time and this has prejudiced his case on the issue of transfer.

6. In the counter, learned counsel for respondents Shri R.P. Aggarwal submitted that the applicant has been in Delhi throughout his career and

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had no occasion to be posted outside Delhi. Order dated 16.2.96 of the competent authority relieving the applicant with effect from 19.2.96 was issued since the applicant was found medically fit. While denying any malafide on the part of respondents in a normal written reply, the counsel submitted that the transfer of the applicant was on consideration of his suitability for the post falling vacant at Calcutta and it was based on consideration of public interest and exigency of service. The contention that there has been a regular practice of issuing circulars inviting options/willingness before ordering transfers has been denied by the respondents. The respondents have also argued that persons who are graduates in mechanical engineering, like the applicant, had worked and are working in EREBS. As per CPS rules, members of the service are to be brought on equal footing for all matters such as promotions/deputation and transfer etc and not differentiated on the basis of particular branch of engineering in which he/she is a graduate. All of them being in common cadre, the question of discrimination does not arise, contended the counsel for respondents.

7. As regards the applicant's contention that there is one sanctioned post of SE, EREB/Calcutta and the respondents have allowed as many as 3 officers inclusive of the applicant, it has been pointed out that the applicant has tried to mislead the Tribunal. This has been done to take care of the functional requirements. There are total 3 posts of SE i.e. one each for EREB/Calcutta and 2 for RLDC. Therefore,

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posting of the applicant in place of Shri S. Mukherjee, retiring on 31.1.96 has not added to the additionality of staff over and above the sanctioned strength.

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8. Relying on the decisions of the Hon'ble Supreme Court in the cases of Shilpa Bose Vs. Govt. of India (AIR 1991 SC 532), State of Punjab Vs. Joginder Singh Bhat (AIR 1993 SC 2486), UOI Vs. S.L. Abbas (AIR 1993 SC 2444), UOI Vs. N.K. Samat (AIR 1993 SC 1605) and N.K. Singh Vs. UOI (JT 1994(5) SC 298), respondents have contended that transfer orders issued by the competent authority in public interest do not violate any of the legal rights of the applicant. It is entirely for the employer to decide when, where and at what point of time a public servant is required to be transferred from his present place of posting. Ordinarily courts have no jurisdiction to interfere with the valid orders of transfer.

9. The scope of judicial review in matters of transfer is now well settled and is very limited. We shall refer to some of decisions cited by the counsel for the applicant as also some others which are very relevant to the present case. In Shantikumari Vs. Regional Deputy, Director Health Services (AIR 1981 SC 1577), the Supreme Court observed that in the case of transfer of a government servant made in the exigency of service and for administrative reasons, the court should not normally interfere. Even if a transfer order is alleged to have been issued in contravention of the Government instructions/guidelines, the official concerned has to put up representation to the

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appropriate executive authority. In the case of Gujarat State Electricity Board Vs. Atmaram (1989 10 ATC 396), the apex court held that transfer of an employee is an incident of service and the employee has no right to get posted to a particular place and transfer cannot be avoided merely on grounds of pendency of representation or personal difficulty. In case of UOI Vs. H.N. Kirtania (1989(11) ATC 269), the apex court ruled that it is not open to the court to interfere in transfer of an employee unless the same is malafide, illegal or in violation of statutory rules. In Shilpi Bose Vs. State of Bihar (1992 SCC(L&S) 127, the Supreme Court had gone into the question in greater details and observed, inter alia, that even if transfer orders are issued in violation of executive instructions or orders, the court ordinarily should not interfere with the said order. Para 4 of the judgement refers in this connection. The affected parties should approach the higher authorities in the Department. It is for the administration to take appropriate decision in the matter of transfer on administrative grounds, consider individual cases of hardships but such decisions shall stand unless they are vitiated either by malafide or extraneous consideration without any factual background foundation. (see State of MP Vs. S.S.Kaurav 1995 SCC(L&S) 666. In Rajendra Roy Vs. UOI 1993 SCC(L&S) 138, the apex court observed that transfer order which is not malafide and not in violation of service rules and issued with proper jurisdiction cannot be quashed by the court. It also laid down that malafide action can be inferred from the pleading and antecedent facts and circumstances only if there is a firm foundation of facts pleaded and

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established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. In UOI V. S.L.Abbas (1994 SCC(L&S) 320) the apex court had clearly demarcated the jurisdiction of the Tribunal in such matters. We will reproduce below the Head Notes A & B of this judgement:

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"(a) Constitution of India, Article 309 - Fundamental Rules, Rr.11,15-Transfer-Government employee-Guideline issued by Government-Do not confer upon employee legally enforceable right-Order of transfer made without following guidelines-Cannot be interfered with by Court unless it is vitiated by mala fides or is made in violation of statutory provision.

Transfer-Government employees-Guidelines issued by Government-Do not confer upon employee legally enforceable right.

"(b) Constitution of India, Article 323A-Central Administration Tribunal-Jurisdiction of-Is akin to jurisdiction of High Court under Article 226-CAT not being Appellate Authority, cannot substitute its own judgement for that of competent authority, Administrative Tribunals Act(1985)S.14".

10. In N.K. Singh Vs. UOI (1994 SCC(L&S) 1130) their Lordships of the Supreme Court in para 2 of the judgement had, inter alia, observed that the only realistic approach in transfer matters is to leave it to the wisdom of the superiors to take the decision unless the decision is vitiated by mala fide or infraction of any professed norms of principle governing the transfer which alone can be scrutinised judicially. There are no judicial manageable standards for scrutinising all transfers and the courts do not have the necessary expertise for personal management of Govt. departments.

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11. Very recently in the case of Abani Kanta Ray Vs. State of Orissa (1996) 32 ATC 10) Supreme Court has held that "it is settled law that a 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 malafides or infraction of any professed norm or principles governing a transfer."

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12. In P. Damodaran (Dr) Vs. State of Kerala (1982) 1 SLR 563), the Kerala High Court had laid down that a person acts mala fide if he exercises the power perversely, unauthorisedly or improperly or unreasonably. In Sheshrao Nagorao Umap Vs. State of Maharashtra (1985) 2 LLJ 73), the Bombay High Court had held that the power to transfer must be exercised honestly, bona fide and reasonably and that if such power is exercised for achieving an alien purpose or an oblique motive it would amount to mala fide, and colourable exercise of power.

13. In Bank of India Vs. J.S. Mehta (1992) 1 SCC 306) the Supreme Court ruled that the guidelines issued by the Government for posting husband and wife at one station do not give legal right to claim posting at one station if authorities consider such posting as not feasible. In the case of J.K. Dave Vs. State of Gujarat (30(1) GLR 571), the Gujarat High Court referred to the decisions of the Supreme Court in such matters and observed, inter alia, that transfer is not to be made on the basis of seniority of employees or on the basis of a serial order to be arranged according to length of

service at a particular place. Transfer of an employe is a matter of adjustment and accommodation to be made by the administrative authorities concerned. It is within the powers of the executive and it is not to be interferred with by the courts.

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14. We shall now proceed to consider whether the applicant's case can be brought within the above parameters which could call for our interference in the matter. From amongst the catalogue of contentions/allegations levelled against R-3, a few of them would not hold good in the eyes of law. The applicant's plea that his case has been prejudiced because of being a favourite of the former Chairman cannot be accepted in view of the fact that it was this very Chairman/CEA who had included him in the Committee referred to above. Similarly, plea of applicant that he has been transferred to a place where the actual strength exceeds sanctioned strength, or in violation of norms of seniority or against DOP & T's guidelines to post husband and wife at the same place or against the professed norms of transferring officials based on individual's speculisation cannot be accepted in terms of the law laid down by the Apex Court as discussed aforesaid. Again, the allegation that the applicant has been taken out the committee wrongly cannot be sustained. It is the prerogative of appropriate authority to include or exclude an official in a committee. Nobody can claim a vested right in such matters. What remains to be probed are those specific allegations targetted against Respondent No.3 as mentioned in para 5(A)(B), (C) & (D). In this respect,

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it is apposite to recall decisions of the Hon'ble Supreme Court in *Manager, Govt. Branch Press Vs. D.B. Belliappa* (1979)1SCC 477). It was held:

"Where a charge of unfair discrimination is levelled with specificity or motives are imputed to the authority making the impugned order of termination of service, it is the duty of the authority to dispel that charge by disclosing to the court the reason or motive which impelled it to make the impugned action"

15. The same view has been taken by the apex court in the case of *Express Newspapers Pvt. Ltd. V. UOI* (1986)1 SCC 133. In para 116 of the judgement, it has been held that:

"Where mala fides are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain unrebutted and the court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability."

In *N.K. Singh's* case (supra) there was specific allegation against the Prime Minister that he had approved transfer orders as he was annoyed with the applicant on account of certain investigations made by him on a complaint of phone tapping and also the investigation made by the applicant against a so called Godman. The then Prime Minister was impleaded as party respondent by name in that case and the specific allegation of malafide as also alleged ulterior motive in the transfer was strongly refuted. Respondents in the present case failed to take action on the lines aforesaid.

16. We also fail to appreciate the prolonged silence on the part of R-3 in communicating proper response to the Hon'ble MOS (P)'s order upon which comments of R-3 was called for vide letter dated 8.2.96. As per communication of the office of respondent No.3 dated 22.2.96, the transfer order was said to be "purely on administrative grounds and in public interest."

17. With reference to MOS (P)'s note, Ministry has called for a report within 20 days from 6.3.96. There were several reminders but the office of R-3 decided to turn Nelson's eye on those correspondences. Besides mentioning that it would be practically impossible to fill up the vacancy in the field office of CEA and taking cue from this case other officers in the field office will be approaching the Ministry to get their orders cancelled, R-3 had no other valid answer.

18. A close scrutiny of the departmental file reveals that even very higher officials of the Ministry felt that there was some strength in what the applicant has been claiming. Pages 11 to 59 of the Ministry's File No. A 6046/10/96-Admn.-I refer in this regard. The Ministry deprecated the inordinate delays on the part of R-3. The latter woke up only in last week of July 1996 on receipt of reference from P.M.O. and that too after receiving second reminder dated 26.6.97 from no less than Secretary(P) himself. Reminders received earlier from less than Secretary level officers proved abortive excepting too elusive letters dated 22.2.96 and 12.4.96 without containing details as regards Ministry's

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stand on the transfer order being in public interest. It is not understood how Respondent No.3 could ignore the orders of the Minister particularly when remarks of CEA was demanded within a particular time period.

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19. Although mid-scholarstic session transfer order cannot be questioned in terms of judgement in J.S. Dhatt's case (AIR 1993 SC 2486(supra) but there are no explanation whatsoever as to why the transfer order could not be issued at the end of the academic year or why the applicant could not be allowed to remain in Delhi till the end of April/May, 1996 when the new course for his daughter was to commence. Applicant had raised this problem, in particular, at all levels. We refer here the direction of the Supreme Court in the case of Director of School Education, Madras & Ors. Vs. O.Karupiah Thevar 1994 SCC(L&S) 1180 wherein their Lordships were of the view that in effecting transfer the fact that the children of the employee are studying should be given due weightage particularly when exigency of service are not there. In the present case no other officer was posted vice the applicant till August, 1996 and yet the latter was relieved in the middle of February when the applicant has raised the plea of discrimination against R-3 on this issue. It was necessary for the respondents to provide necessary justifications for actions taken.

20. Malafide has only to be presumed from established facts. In Sankaranarayanan Vs. State of Karnataka (1993) 1 SCC 54, the Supreme Court observed:

"It may not always be possible to demonstrate in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala

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fides from the facts pleaded and established. Such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuations, surmises and conjectures".

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Respondents, therefore, were required to satisfy that the transfer was for administrative exigency. Merely repeating the phrase "administrative exigencies" in the reply could not suffice when a specific charge of mala fides is made on certain facts which are borne out from records and are not disputed by the respondents.

21. In the instant case, respondents admittedly have no case that the applicant is inefficient, disobedient, incompetent or dishonest. At the most, the charge against the applicant could be, as has been made, one of bringing in political pressure. All this happened when he failed to get relief from regular channel. As per records the applicant appears to have superseded too many seniors at different levels. When the Tribunal is alerted, it has necessarily to lift the veil of deceptive innocuousness and see what actually motivated the transfer. Sequence of events in the instance case do not augur well in terms of unbiased handling of administrative affairs or even fair treatment to the aggrieved official. After the applicant gave his report on 16.11.95, series of events occurred. They are: (i) Applicant's name was excluded on 29.11.95 after having formed the Committee (Procurement of Audio Visual System) on 20.11.95, (ii) Transfer order of the applicant issued on 22.1.96 (iii) Relieving order given on 16.2.96 without replacement, (iv) Prolonged silence of R-3, in giving satisfactory

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reply or report to MOS (P), (v) Disregarding MOS (P)'s order to retain the applicant at Headquarters; (vi) Took action on different administrative issue like posting seniors for Field Training when the matters were exposed, (vii) Accepted the plea of applicant as genuine after unduly dragging the case and finally (ix) R-3 agreed to revert the applicant back to Delhi even by breaking the normal period of deputation. The above chronological events and preceding developments or lack of transparent actions before each one of them, when studied carefully, bring out something more than what the two eyes can see.

22. In the instant case, the facts and circumstances aforesaid read with details available in Ministry's concerned file establish beyond doubt that there was unfairness and malice. Behind the mask of innocence, there was a hidden sweet anger, a desire of R-3 to get rid of applicant herein having become inconvenient for the organisation at least for the time being. It is a case where executive power has been exercised to achieve an alien purpose or an oblique motive and amounts to mala fide and colourable exercise of power.

23. In the light of the above discussions on the rules and regulations on "Transfer", the impugned orders clearly impinges one of fundamentals of the law laid down by the Apex Court in Abani Kanta Ray's case, aforequoted in para 11.

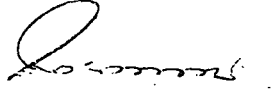
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24. In the result, the original application succeeds on merits and is accordingly allowed. A-land A-2 orders dated 22.1.96 and 16.2.96 are set aside. This does not, however, debar the respondents to issue a fresh transfer order, if considered necessary, in the light of the observations made above and in accordance with law.

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No order as to costs.


(S.P. Biswas)
Member(A)


(Dr. Jose P. Verghese)
Vice-Chairman(J)

/vv/