

Central Administrative Tribunal
Principal Bench
OA No.2206/94

New Delhi this the 14 Day of August, 1995. 3

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

H.K. Malhari,
S/o Sh. R.C. Malhari,
R/o, A-4, Defence Colony,
New Delhi.

...Applicant

(By Senior Counsel Sh. R.P. Sharma with Sh. A.K.
Behera, Counsel)

Versus

1. Union of India through
the Secretary, Ministry
of Home Affairs,
North Block,
New Delhi.
2. Chief Secretary,
Govt. of National Capital
Territory of Delhi,
5, Sham Nath Marg,
Delhi-110054.
3. Chairman,
Delhi Scheduled Castes
Financial & Development
Corporation Ltd.,
86, Old Secretariat,
Delhi-110054.
4. Sh. P.M. Sayeed,
Minister of State for
Home Affairs, North Block,
New Delhi.
5. Dr. Khaliullah,
Director of G.B. Pant Hospital,
New Delhi.
6. Secretary (Medical),
NCT of Delhi,
5, Sham Nath Marg,
Delhi-110054.

...Respondents

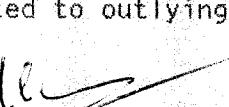
(Sh. N.S. Mehta, Senior Standing Counsel for
respondent No.1).

(Sh. Anoop Bagai, Counsel for respondents No.2&6).

(Sh. M.S. Oberoi, Counsel for respondent No.5).

(None appeared for respondents No.3&4).

1. To be referred to the Reporter or not? ✓
2. Whether it needs to be circulated to outlying
Benches of the Tribunal? 7


(N.V. Krishnan)
Vice-Chairman(A)

Central Administrative Tribunal
Principal Bench

OA No. 2206/94

New Delhi this the 14th Day of August, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Dr. A. Vedavalli, Member (J)

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(None appeared for respondents No.3&4).

ORDER

(Hon'ble Mr. N.V. Krishnan, Vice-Chairman (A))

The applicant is aggrieved by the impugned
order dated 26.8.94 (Annexure A-1) passed by the

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Ministry of Home Affairs, respondent No.1, transferring him with immediate effect to Andaman and Nicobar Islands - Islands for short. On receipt of this order the applicant addressed a representation dated 6.9.94 to the first respondent and submitted it to the Managing Director of the Delhi Scheduled Castes Financial & Development Corporation Ltd. - Corporation for short - to forward it with his comments (Annexure A-12). That representation, was forwarded by the Corporation. It is alleged that instead of considering this representation, an order dated 24.10.94 was passed by the first respondent (Annexure A-2) relieving the applicant, with effect from the same day and by that order he was directed to report to the Chief Secretary of Islands immediately. He is aggrieved by this order also.

2. The facts are not disputed and the background in which the OA has been filed can be briefly stated as follows.

2.1 The applicant, who was in the service of Delhi Administration, was first promoted to Grade-II of the Delhi Andaman and Nicobar Islands Civil Service (DANICS for short) in 1983 and further promoted to Grade-I in 1986. He was posted from 3.8.92 as Deputy Medical Superintendent cum Director (Admn.) in the G.B. Pant Hospital under the Government of N.C.T. The applicant was again promoted to the Junior Administrative Grade (JAG) of DANICS by the order dated 9.11.93 and was continued in the same post.

2.2 While so, the applicant was transferred to the Islands by the order dated 18.1.94. His representation dated 28.1.94 (Annexure A-5) against the transfer was accepted and his transfer was cancelled by the order dated 31.5.94 (Annexure A-10). 

2.3 In the meanwhile, the applicant had already been relieved of his duties from the G.B. Pant Hospital w.e.f. 28.2.94. Therefore, by the Annexure A-11 order dated 4.5.94 the applicant was posted by the Government of NCT as General Manager of the Corporation on deputation (Annexure A-11). He assumed charge of this post on 6.5.94.

2.4 It is while holding this post that the impugned Annexure A-1 order was passed by which he and 8 others belonging to the DANICS were posted with immediate effect to the Islands. The order requests the Government of NCT to relieve all of them immediately and direct them to report to the Chief Secretary of the Islands.

2.5 He submitted a representation on 6.9.94 (Annexure A-12) which was forwarded by the Corporation to the Government of NCT who, in turn sent it to respondent No.1.

2.6 The OA is silent whether any reply was received. It is stated that the first respondent issued the second impugned order dated 24.10.94 which relieved the applicant with immediate effect and 

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directed him to report to the Chief Secretary of the Islands. Consequent upon the Annexure A-2 order, the Government of NCT issued an order on the same date, i.e., 24.10.94 (Annexure-I to reply of respondent No.2) to the Managing Director of the Corporation who was asked to ensure that the applicant handed over charge of the post of General Manager and to direct him to report to the Chief Secretary of the Islands.

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2.7 It is at this stage that the applicant filed this OA against the Annexures A-1 and A-2 orders and sought a direction to quash the impugned orders and give all consequential benefits to him.

3. When the matter came up before a learned Single Member Bench of this Tribunal on 8.11.94 it was submitted that the applicant had not yet been relieved. Therefore, an ad interim direction was issued for the maintenance of the status quo of the applicant as on that date. This interim order has been continued till date. Subsequently, at the request of the learned counsel for respondent No.1, the matter was referred to a Division Bench and that is how this OA is before us.

4. All the respondents, except the 4th respondent Sh. P.M. Sayeed, Minister of State for Home Affairs in the Government of India, have filed replies. The first and second respondents have opposed the OA and sought its dismissal.

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5. Before we consider this case we should remind ourselves of the scope of intervention by Courts in respect of orders of transfer of Government employees. The Supreme Court has repeatedly held that, transfer being an incident of Government service, Government servants cannot complain of transfer and orders of transfer cannot be interfered with, except if it is established that the transfer was malafide or that it violated any statutory provisions. In Union of India vs. S.L. Abbas (1993 (4) SCC 357, the transfer of the respondent employee from the post of Garden Curator in the office of the Scientist - SC Botanical Survey of India, Eastern Circle Shillong to Uttar Pradesh, along with 18 others, was struck down by the Guwati Bench of this Tribunal. On appeal by the Union of India, the Supreme Court observed as follows:-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible husband and wife must be posted at the same place. The said guideline, however, does not confer upon the Government employee a legally enforceable right."
(emphasis given)

The respondent employee sought to derive support from the judgement of the Supreme Court in Bank of India vs. Jagjit Singh Mehta (1992 (1) SCC 306) dismissing a request for cancellation of

transfer as it separated the two spouses. Repelling this claim the Supreme Court held that, on the contrary, even that judgement did not support the contention of the respondents. The Court further observed as follows:-

"10. The said observation in fact tend to negative the respondent's contentions instead of supporting them. The judgement also does not support the respondents' contention that if such an order is questioned in a court or the tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the court or the tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterised as malafide 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." (emphasis given)

In the circumstances we have only to consider whether either malafide is established or any violation of statutory provisions has been established.

6. We have heard Sh. R.P. Sharma, learned Senior counsel for the applicant, Sh. N.S. Mehta, Senior Standing Counsel for respondent No.1 - Union of India, Sh. Anoop Bagai, Standing Counsel for respondent No.2, Government of NCT through the Chief Secretary, and respondent No.6, Secretary (Medical) of the NCT, and Sh. M.S. Oberoi, Counsel for Dr. Khalilullah, respondent No.5. None appeared for the Chairman of the Corporation, respondent No.3 and for respondent No.4, the Minister of State for Home Affairs.

7. We shall first consider whether any charge of malafide has been proved. In this regard the applicant has alleged in his OA as follows:-

"4.3 That the applicant in his capacity as Dy. M.S. G.B. Pant Hospital was also in charge of vigilance Department of the Hospital.

4.4 That Dr. Khaliullah has been the Director of G.B. Pant Hospital for the last 9 years. It is pertinent to mention here that as the Head of the Institute, Dr. Khallullah was displeased with the applicant because of a number of reasons. Besides, other reasons, it is submitted that the applicant pointed out the discrepancies in the SSB of Group 'D' posts held from 18th June to 2nd July, 1993 chaired by the Director G.B. Pant Hospital Sh. Khaliullah to the Jt. Secy Medical. On pointing out such discrepancies, the Jt. Secy Medical vide his letter dated 16.12.93 directed the applicant to take into his custody the SSB records from Dr. Khaliullah. In pursuance to the said direction, the applicant took the said records from Dr. Khaliullah to his custody. Dr. Khaliullah took this as an affront on his prestige. It is worthwhile to point out that after thorough examination, the Ministry overruled the selection held by the SSB chaired by Dr. Khaliullah. A copy of the order dated 16.12.93 is attached herewith as Annexure A-4 for the kind perusal of this Hon'ble Tribunal.

4.5 That the said overruling of the selection made by Dr. Khaliullah at the initiative of the applicant who was his subordinate was not taken up kindly by Dr. Khaliullah. Being annoyed by the said action of the applicant, Dr. Khaliullah nurtured a grudge against the applicant which was reflected in all his official dealings with the applicant. So much so that Dr. Khaliullah overruled almost all the orders passed by the applicant.

4.6 That, in view of the above facts and circumstances, Dr. Khaliullah with a view to wreck vengeance on the applicant approached Mr. P.M. Sayeed, Minister of State for Home Affairs in charge of Union Territories Administration, who happens to be one of his patients. It is

submitted that with the interference of the Minister concerned the applicant was transferred to the A & N Island Administration by the order dated 18.1.94."

He has impleaded the Minister and Dr. Khaliullah as respondents 4 & 5.

8. In reply to these allegations only Dr. Khaliullah has filed a reply denying them. No reply has been filed by the 4th respondent denying the charge of malafide. However, respondent No.1 has denied it on the basis of information received.

9. The learned counsel for the applicant contended that, inasmuch as the 4th respondent has failed to file a reply denying the allegations against him about malafide, it has to be presumed that the allegation is proved. In this regard he relies on the judgement of the Supreme Court in Pratap Singh Vs. State of Punjab (AIR 1964 SC 72). We have seen that judgement. The appellant therein was a Civil Surgeon. In view of certain incidents involving the Chief Minister, he found that the latter has turned hostile. Accordingly, he sought leave preparatory to voluntary retirement. This was sanctioned and notified. Thereafter, an article appeared in the weekly newspaper 'Blitz', making certain allegations against the Chief Minister. It could be made out that this was inspired by the petitioner. Thereupon, the leave preparatory to retirement was revoked and a disciplinary proceeding was instituted against the appellant. The appellant moved the High Court unsuccessfully to quash the

proceedings. Hence, he filed an appeal before the Supreme Court. It is seen from the judgement that, in the writ petition, the applicant had made as many as 7 allegations against the Chief Minister or members of his family in regard to which he was personally involved and about which he had personal knowledge. By a majority judgement the appeal of the petitioner was allowed. In regard to the allegations made against the Chief Minister the following observations were made in the majority judgement:-

"14. We shall first take up for consideration the several allegations that have been made and see whether they had been satisfactorily made out. Before proceeding further it is necessary to state that allegations of a personal character having been made against the Chief Minister, there could only be two ways in which they could be repelled. First, if the allegations were wholly irrelevant, and even if true, would not afford a basis upon which the appellant would be entitled to any relief, they need not have been answered and the appellant would derive no benefit from the respondents not answering them. We have already dealt with this matter and have made it clear that if they were true and made out by acceptable evidence, they could not be ignored as irrelevant. (2) If they were relevant, in the absence of their intrinsic improbability, the allegations could be countered by documentary or affidavit evidence which would show their falsity. In the absence of such evidence they could be disproved only by the party against whom the allegations were made denying the same on oath. In the present case there were serious allegations made against the Chief Minister and there were several matters of which he alone could have personal knowledge and therefore which he alone could deny, but what was, however, placed before the Court in answer to the charges made against the Chief Minister was an affidavit by the Secretary to Government in the Medical Department who could only speak from official records and obviously not from personal knowledge about the several matters which were alleged against the Chief Minister. In

these circumstances we do not think it would be proper to brush aside the allegations made by the appellant, particularly in respect of those matters where they are supported by some evidence of a documentary nature seeing that there is no contradiction by those persons who alone could have contradicted them. In making this observation we have in mind the Chief Minister as well as Mrs. Kairon against whom allegations have been made but who have not chosen to state on oath the true facts according to them."

10. That situation does not obtain in the present case. No doubt, if true, it would have meant that the transfer was not made in public interest but to help another person to wreak vengeance on the applicant. What distinguishes the present case from the case of Pratap Singh is the lack of personal knowledge on the part of the applicant about the allegation made by him in respect of respondent No.4 and 5. The allegations made against the 4th respondent are in respect of matters about which, obviously, the applicant could not have had any personal knowledge. No evidence is produced by him to show that the 4th respondent, the Minister, was suffering from some illness for which he was consulting the 5th respondent Dr. Khaliullah. In any case, he could not have been a privy to what transpired between them during such consultations, even if they took place. It is clear that there is no shred of evidence to show either that Dr. Khaliullah was attending on the Minister for treatment, or that he requested the Minister to transfer the applicant to the Islands. In the circumstances, the mere fact that the 4th respondent

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had not submitted a reply denying the allegations is of no consequence and cannot lead to any inference that the allegation of mala fide stands proved.

11. It is only necessary to mention that the learned counsel for the applicant has also relied on the decision of the Supreme Court in N.K. Singh vs. Union of India and Others 1994 (6) SCC 98 in connection with the charge of mala fide. Attention is drawn to para 21 thereof. In view of what we have held in this regard this decision does not advance the case of the applicant. Likewise, reliance of the applicant on M. Sankaranarayanan, I.A.S. vs. State of Karnataka (AIR 1993 SC 763) is irrelevant. It was pointed out in that judgement that it may not always be possible to demonstrate malice with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. We find that nothing has been established by the applicant to permit drawing any inference.

12. The fifth respondent has denied the allegations in his reply. We do not consider it necessary to consider that reply in detail in view of what we have stated in para 10. It has only to be added that the applicant had sought to bring in more allegations in his rejoinder to establish that Dr. Khaliullah had a definite grouse against him. This was not permitted by us. We held that as bias was alleged in the OA against Dr. Khaliullah who was,

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therefore, made a party, it was the duty of the applicant to set forth in the application itself all the grounds therefor.

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13. We find that the charge of malafides against Respondent No.4 and respondent No.5 is baseless and unfounded.

14. The learned counsel also submits that malafide is established on the ground that the transfer of the applicant was ordered by the Minister himself and it was not proposed or suggested by any other authority. As will be shown presently, this is a fact. However, this will have significance only if it is established that this was directly the result of the request made by the 5th respondent to the Minister, as he was close to the Minister being, his physician, actuated by his prejudice and animus towards the applicant. We have already held that there is no foundation to support this allegation either against Dr. Khaliullah or the Minister. Hence, this fact too loses its significance.

15. We shall next consider whether the transfer is in violation of any statutory rule.

16. The applicant has not alleged that there is any statutory provision or rule governing transfer. He alleges that there is a policy that a person who is already 50 years old should not be

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transferred and that there is another policy that if husband and wife are working in the same station, they should not be separated.

17. The applicant has stated that the policy regarding not transferring persons who are more than 50 years is contained in the file dealing with the cancellation of the transfer of one Mr. Sareen. Reference is made to file No.14020/28/92/DTS in this connection in para 4.7 of the OA. In reply thereto, the first respondent has specifically denied that there is any such established policy. This is borne out by the fact that Sh. Rajender Singh, a DANICS officer in the JAG scale, was posted to the Islands on 24.12.93 and he took up his duties forthwith, even though he was fifty and a half years old at that time. In so far as Sh. Sareen is concerned, it is stated that, among other grounds mentioned by that officer, one was that he was more than 50 years. The mere fact that his transfer was cancelled does not imply that there is such a policy. It is stated in clear terms in the reply that there are no orders of the Government of India which prevent posting of officers beyond the age of 50 years to another station.

18. We have considered the matter. Apart from referring to the file regarding the transfer of Shri Sareen - to locate the policy of the Central Government - the applicant did not produce any order or memorandum in this behalf. We are of the view that if Government has any public policy, it is

always conveyed in an order or office memorandum or D.O. letter. In regard to this so called policy, there is no such authority.

19. The applicant has also sought to distinguish the case of Sh. Rajinder Singh referred to above. It is stated that he was on the verge of being considered for promotion to the IAS. Hence, he was transferred, because the policy is also that the age bar of 50 years will not apply to persons being considered for appointment to the IAS. On the contrary, a perusal of the Part-IV of the file No.14016/45/91-UTS of the first respondent relating to the transfer/posting of DANICS officers shows that Sh. Rajinder Singh has a different impression of what the policy is. He made a representation on 24.1.94 against his transfer to the Islands in which he stated that as he was in the zone of consideration for promotion to the IAS, he should not be transferred, in accordance with the policy decision taken in the case of Ms. Asha Nayyar.

20. This only confirms what has been stated by the first respondent. There is no policy decision in this regard. Each case is considered on merits, after considering all grounds raised. No policy can be discerned by us from such isolated instances. We are firmly of the view that if there was a policy there would have an order or O.M. outlining it.

21. Apart from the fact that the Government of India has denied that there is any such policy, even otherwise, the claim pressed is not tenable. Even if there was a policy, it is only a guideline and does not create any right in an employee. A perusal of the file produced by the Government of India shows how difficult it has been to ensure that persons transferred to the Islands did take over charge there. For, such a transfer was being avoided by all officials and stringent steps - almost arm-twisting tactics - had to be resorted to ensure compliance of the transfer orders, as will be shown presently.

22. The applicant has next laid stress on the established policy of keeping the husband and wife together. He has referred to the guidelines issued by the Department of Personnel on 3.4.86 in this behalf (Annexure A-6). That guideline is not an inflexible rule. If administrative interest so dictates the spouse can be posted to a different station. The applicant belongs to a service where transfer to the Islands is a basic condition of service. As will be shown presently, there is a tendency to avoid posting to the Islands. Hence, a strict attitude was adopted in respect of the persons transferred by the Annexure A-1 order. This plea, therefore, will not help him in challenging the impugned orders.

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23. In this connection the observation of the Supreme Court in Bank of India vs. Jagjit Singh Mehta 1992 (1) SCC 306 in which a similar matter relating to transfer was concerned, is relevant. It was stressed that ordinarily and as far as practicable the husband and wife should be posted at same station. However, if, in the exigencies of service, one of the spouses is transferred to another place, it is only an incident of his service condition. The Court held that in the case of All India Service, hardship resulting from the two spouses being posted at different stations may be unavoidable, particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. The Court held in that case that, after giving preference to career prospects, by accepting promotion to the All India Service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of All India Service and avoid transfer to a different place on the ground that the spouses would be posted to different places. Those observations apply with equal force to the present case where the applicant has accepted promotion to the DANICS service in 1983, which involves a liability to be transferred to the Islands an incident of his promotion, while his wife cannot be transferred to that place.

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24. It is time we made our observations from a perusal of the file produced by the first respondent.

25. It is seen from the file of the Government of India that information was placed by the Director C.S. that three officers already transferred were not likely to be relieved due to the Municipal Elections. He also recorded the desire of the Minister (respondent No.4) that the applicant should be transferred immediately. This resulted in the issue of the first order of transfer. Thus, the transfer of the applicant to the Islands was done on the initiative of the 4th respondent. That file also reveals that the Ministry was experiencing considerable difficulties in ensuring the relief of officers transferred to the Islands.

26. On the applicant's representation, there was no approval to cancel the transfer. In his case and in the case of others, there was only a staggering of the orders of relief. In the case of the applicant, who already stood relieved, it was decided on file on 18.3.94, that he could commence his journey on 1.6.94. The matter was later discussed with the Home Secretary and the transfer of the applicant itself was cancelled, as is evident from the note dated 30.5.94. This came to the notice of the 4th respondent, the Minister of State, when further proposals for filling up vacancies in the Islands were put up to him for approval. The proposals in respect of 4 officers in the JAG and 4

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officers in the Grades I and II for transfer to the Islands were approved by the Minister. He, however, took umbrage to the order of cancellation in respect of the applicant's transfer. He noted that the applicant was only allowed to continue for a few months more on compassionate grounds but was to report in the Islands by 1.6.94. The cancellation was done without even informing him. He, therefore, took a serious view of the disobedience of his order and directed that the applicant be relieved immediately. Accordingly, the applicant's name was also included in the order of transfer which is at Annexure A-1.

27. Incidentally, this ground has been picked up by the applicant to contend that this amounts to malafides as the applicant has been picked for transfer on the sole discretion of the Minister. We have dealt with this aspect of the matter in para-14 above. The learned counsel has relied upon a judgement of the Chandigarh Bench of this Tribunal in Gurnam Singh vs. Union of India and Others 1993 (2) SLR 167. It is pointed out that it has been held by the Tribunal in that case that the procedure followed was extraordinary and in view of the allegations made therein the Tribunal found that there was an act of malafide in that case. A perusal of that case shows that the applicant therein - an officer belonging to the Indian Forest Service - was posted to an inferior post of O.S.D. and there were also certain involved developments, referred to in para-16 of that judgement. It is for the detailed reasons given

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therein that the impugned action was held to be malafide. There is no such circumstance in the present case. This applicant was promoted to the DANICS in 1983 and has never been transferred to the Islands. The Ministry was finding it difficult to fill up the vacancies in the Islands. In the circumstances, if the applicant was transferred to the Islands, even though it be on the basis of the individual decision of the Minister alone, that cannot be held to be a malafide decision. There is no rule of business of Government to the effect that a Minister cannot come to any decision independently and without the advice of his Secretary.

28. That takes us to the Annexure A-2 order of the Government of India relieving the applicant. It is seen from the above file that 5 of the 9 officers transferred were directed to be relieved by the Government of N.C.T. In regard to the others, the Chief Secretary of the Delhi Administration made a representation, expressing his difficulties in relieving them, as there was a shortage of officers in the cadre. The Joint Secretary in the Ministry found the approach of the Chief Secretary quite strange because the names of the officers for transfer - other than the applicant - were decided in consultation with him and he was directed to ensure compliance of the transfer orders. That official recorded as follows:-

"I may add that there are any number of officers who may actually be having more clout or genuine reasons to stay in Delhi, but are submitting before the orders and joining A & NI. If this case

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is decided in favour of staying Shri Malhari's transfer, we may expect a spate of well-backed representations.

We have communicated (P 27 N refers) a rejection of Shri Malhari's representation vide our letter at flag 'Y', and possibly the only course open is to order that Shri Malhari stands relieved w.e.f. Friday, 21st Oct' 94 (A/N) to enable him to join A&NI."

That proposal was approved by the Additional Secretary and hence the Annexure A-2 order was issued.

29. It is only necessary to add that it was noted on that file that of the nine officers transferred by the Annexure A-1 order, three have not been relieved by the Government of N.C.T. in view of the charges held by them. Two relieved officers (the applicant and one Devesh Singh) have obtained stay orders. Two officers, K.K. Jindal and Vijendra Singh, had already reported for duty. Two others appeared to be recalcitrant. In their cases, the Ministry decided to take disciplinary action, which had a salutary effect and resulted in their joining duty in the Islands.

30. The file shows that the representation of the applicant against the second transfer was considered. The likely repercussion of accepting that representation on others under transfer was taken note of. It was also felt that the applicant's representation was only to gain time. Hence, it was rejected on 13.10.94 and the order was communicated to the Chief Secretary on the same day.

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31. We can now consider the challenge to the Annexure A-2 order. We have noted above how such an order came to be passed. Frankly speaking, this is an unusual order. Admittedly, the applicant was working under the Government of NCT which had sent him on deputation to the Corporation, respondent No.3, which is a Company under the Companies Act, i.e., an independent entity. Therefore, by this order the applicant could not have been got relieved. *purpose,* For that, the Government of NCT took separate action. Nothing has been placed before us to show that the Annexure-2 order is, notwithstanding its unusual character, valid. We are of the view that such an order could not have been passed. Therefore, that order is liable to be quashed. It is, however, open to the second respondent to secure compliance of the direction given to the Managing Director of the Corporation on 24.10.94 to ensure that the applicant handed over charge (Annexure A-1 to reply of R-2), if not already complied with.

32. Respondent No.3 is not a necessary party in this case. There were some arguments about the reply on record. They are not germane to the issue under consideration. Hence, we do not find any need to consider the reply of that respondent except to note that it is admitted that the Government of N.C.T. has asked the General Manager to ensure the handing over charge of the applicant, by its order dated 24.10.94.

33. We have to dispose of a couple of points before we conclude.

i) The first is that the applicant has contended that the posts in the rank of JAG in the Islands are already filled up actually or orders of transfers have been issued and that there is no vacancy. A lot of details is given in the OA in support of this contention. This has been denied by the first respondent's reply. It is not for us to consider the submissions made by him in this regard. But we notice from the file, that the Chief Secretary of the Islands had met the officials of the Ministry and impressed upon them the need to post officials. We are, therefore, unable to accept that there was no vacancy for the applicant in the Islands.

ii) The second is the claim in his representation, about the illness of his father. He has sought a sympathetic consideration on that ground. This has been considered and rejected by Government. This is purely a matter for the administration to consider. This has been reiterated by the Supreme Court in a recent judgement in State of M.P. and Others Vs. S.S. Kourav and Others (1995) 29 ATC 553 SC). The Court decided not to interfere even when informed that the wife of the

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respondent had committed suicide leaving behind three children, holding that Government alone may take an appropriate decision.

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34. For the aforesaid reasons the OA is disposed of with the following orders/declaration and directions:-

- i) The application is dismissed in so far as it concerns the impugned Annexure A-1 order of transfer dated 26.8.94.
- ii) In the circumstances of the case, the Annexure A-2 order dated 24.10.94 relieving the applicant from the Corporation is quashed. This shall not prevent the second respondent from securing, if still necessary, compliance of its direction dated 24.10.94 (Annexure A-1 to reply of second respondent) to the Managing Director of the Corporation to ensure that the applicant handed over charge and is relieved.
- iii) The interim order is vacated.

35. There shall be no order as to costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member(J)

/Sanju/

N.V. Krishnan
14/8/95

(N.V. Krishnan)
Vice-Chairman(A)