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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

<u>O.A. No.</u>	418/	1986
<u>Tax No.</u>	591/	1986
	600/	1986

DATE OF DECISION 23rd Jan., 1987.

(1) OA 418/86. Shri V.M. Thareja
(2) OA 591/86. Shri Narain Das Gulati & Shri C.S. Shivnani.
(3) OA 600/86. Shri Satish Kumar Wahi Petitioner

Shri S.C. Luthra

Advocate for the Petitioner(s)

Versus

Secretary, Ministry of Defence
Union of India and others.

Respondent

Smt. Raj Kumari Chopra

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether to be circulated to other Benches? No

K. Madhava Reddy

(Kaushal Kumar)
MEMBER
23.1.87

K. Madhava Reddy

(K. Madhava Reddy)
CHAIRMAN
23.1.87.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

(1) Regn. No. O.A. 418/1986.

Shri V.M. Thareja V/s. Secretary, Ministry of Defence and others.

(2) Regn. No. O.A. 591/1986.

Shri Narain Das Gulati & Shri C.S. Shivnani V/s. Union of India and others.

(3) Regn. No. O.A. 600/1986.

Shri Satish Kumar Wahi V/s. Union of India and others.

DATE OF DECISION: 23rd January, 1987.

Applicants ... Through Shri S.C. Luthra, Advocate.

Respondents ... Through Smt. Raj Kumari Chopra, Advocate.

CORAM: Hon'ble Mr. Justice K. Madhava Reddy, Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

JUDGMENT

In these three applications filed under Section 19 of the Administrative Tribunals Act, 1985, four applicants have prayed for quashing of transfer order No. 2377/I/3/CA4, dated 8th May, 1986 issued by the Composite Food Laboratory Organisation under the Directorate General of Supplies & Transport, Quarter Master General's Branch, Army Headquarters, New Delhi, transferring the applicants from their present stations of posting to other stations. All the applicants are civilian members of the Scientific Staff in the Composite Food Laboratory under the Ministry of Defence. Since the impugned order in all the three applications is the same, for the sake of convenience, all the three applications are being disposed of by this common judgment.

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2. The applicant Shri V.M. Thareja, Senior Scientific Assistant (applicant in O.A. No.418/1986) has been transferred from Delhi to Gauhati. Shri N.D. Gulati and Shri C.S. Shivnani, Junior Scientific Assistants (applicants in O.A. No. 591/1986) have been transferred from Delhi to Calcutta and Shri S.K. Wahi (applicant in O.A. No.600/1986) has been transferred from Lucknow to Bombay.

3. The transfers have been challenged by the applicants mainly on the ground that they are in contravention of the guidelines for transfer of Class III and Class IV employees of the Defence Installations as incorporated in Office Memorandum No.32(4)/73/D(Appts) dated the 21st May, 1975, issued by the Government of India, Ministry of Defence. It has been contended that the applicants who are Class III employees are covered by these guidelines. The relevant extracts from the said Office Memorandum, on which reliance has been placed by the applicants is reproduced below: -

".....it is reiterated that it is the intention of the Govt. to reduce postings and transfers of these employees to the absolute minimum keeping in view the administrative requirements and the needs of manning the posts at various places and stations. While it has been accepted by all concerned that transfers are often inescapable, it has been decided that in order to minimise resultant/dislocation an attempt should be made to ask for volunteers for posting or transfers and, as far as possible, to post the people who are willing to move to those stations. Even in case of postings to hard tenure stations, if volunteers are available for postings, they should be given preference."

"2. The other basic guidelines for transfers for Class III and IV employees will be that as far as possible employees should not be transferred over long distances, and efforts

should be made to accomodate them near their choice station to the extent possible. This, however, is subject to the exigencies of service, the requirements of service being paramount."

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"4. Class III personnel should not be transferred except in the following cases: -

- i) adjustment of surpluses and deficiencies of personnel borne on common roster.
- ii) Promotions.
- iii) Compassionate grounds / Mutual basis.
- iv) exigencies of service or administrative requirements."

"5. The following further guidelines will be observed while making postings/transfers of Class III employees: -

(a) No compulsory turnover from non-tenure station will be made after completion of any period of service except to cater for turnover from hard/tenure stations or to meet job requirements.

(b) There will be a maximum of 3 years of tenure to a hard station. Requests for stay for longer periods will be considered on merits.

(c) Persons reaching the age of 55 years or over should not be transferred except at their own request and to stations of their choice unless the transfer is necessitated by promotion.

(d) Compassionate postings in the desired stations shall normally be effected only against clear vacancies, failing which against volunteers."

"6. Every effort will be made to accomodate a person at any desired station after he has completed a tenure at a hard station....

"7. Requests are frequently received from Defence employees for posting to a station because the wife/husband of the employee is working at that station. Where the spouse of the Defence employee is an employee of

the Central Government, such request will be favourably considered and, if accepted, will be treated at par with request for compassionate postings and if approved the person will be placed on the waiting list for compassionate postings."

"8. Every effort will be made to effect compassionate postings within a period of one year of the date on which the request is accepted."

4. It was contended that the above guidelines were not followed by the Department inasmuch as the number of postings and transfers had not been kept to the absolute minimum, no volunteers had been called for before making the orders of postings, that transfers had been made to stations over long distances and further that there had been compulsory turnover from non-tenure stations even in cases where it was not required to cater for the turnover from hard/tenure stations.

5. Additional grounds for assailing the transfers have also been taken in individual cases in the three petitions. In the case of Shri V.M. Thareja, it is stated that since he had filed another application (O.A. 39/86) in the Central Administrative Tribunal challenging his seniority and promotion, the respondents got infuriated by his said action and had transferred him to Gauhati in order to teach him a lesson and harass him. It is further stated that the order is bad in law since it had taken away the right of representation. In this connection, attention was drawn to para 2 of the transfer order which says "The moves of the personnel will be completed by 30 Jun 86 directly without waiting for the relief. No representation will be entertained against these postings or for their deferment." It has further been stated that the order is arbitrary, irrational, punitive and violative

of Article 14 of the Constitution. It is also pointed out that after a stay was ordered regarding the operation of the transfer, names of volunteers for posting to Gauhati were called for. One Shri Ramesh Chander posted at Lucknow had given his option for posting at Gauhati, but under pressure, he had since withdrawn his option. It is also stated in the application of Shri Thareja that his second son Anirudh Thareja is a student of final year Class XII of Delhi Senior Secondary School and the applicant is entitled to get his transfer cancelled on compassionate ground as his transfer to Gauhati is apt to hamper his son's education.

6. In the application of S/Shri Narain Das Gulati and C.S. Shivnani also, it is stated in para (k) of the petition that the applicants had already admitted their wards in the schools at Delhi and the session had started in April 1986. If the transfer orders were implemented at this stage, it was bound to cause hardship to the applicants since the "curriculum at Calcutta is different than that of Delhi and it is not certain whether the wards of the applicants will get admission at such a belated stage".

7. In the application of Shri Satish Kumar Wahi also, it is stated in para (k) that the applicant had already admitted his wards in the schools at Lucknow and the session had started in April, 1986. Implementation of the transfer order at this stage was bound to cause hardship. It is further stated in para (l) that the applicant's wife was serving in Research, Design and Standard Organisation (Central Government), Ministry of Railways, Lucknow for the last 18 years and as per Government orders, postings of husband and wife should be accommodated at one station. It has further been

stated that the applicant is a heart patient and is under treatment of Doctors.

8. The stand of the respondents is that the Office Memorandum dated 21st May, 1975 is only a policy guideline and not a statutory order in the form of rules and regulations. It was further contended that the concerned officials who belong to the cadre of Scientific Staff of the Food Inspection Organisation of Army, have to be, in the exigencies of service, posted for the purpose of analysing the food samples meant for the purpose of Armed Forces and that the transfers had been made in the exigencies of service and administrative requirements as also to cater to the requirement of accommodating officials already serving at Gauhati. The allegations of malice alleged by the applicant Shri V.M. Thareja were also denied. It was pointed out that postings and transfers had been made in respect of 22 individuals without any malice or vindictiveness. It was further pointed out that the applicant Shri Thareja had already completed three years in Delhi and had never done a hard tenure during his service of 24 years. It is also stated that the transfers and postings of staff of the Food Inspection Organisation are regulated by CORPS ORDER NO. 6 to 9/79, dated the 1st June, 1979, which reads as follows: -

"1. Class III (Group 'C') civilian scientific personnel employed in the units of Food Inspection Organisation will be turned over at regular intervals in accordance with the instructions contained in this Order.

Tenure of duty

"2. The normal tenure of duty for Class III (Group 'C') civilian scientific personnel employed in units of Food Inspection Organisation will be as under: -

(a) Food Inspection Units other than Army HQ (ST8)

- 3 years.

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(b) Army Headquarters (STS) - 3 years
extendable to 4 years

"Extension of Tenure"

3. Extension beyond the limits stipulated in para 2 above may be granted in deserving and very very exceptional cases only.

4. This supersedes ASC Corps Orders Part I
No. 18/87."

Reliance was also placed on the Government of India, Ministry of Defence Office Memorandum No.4(19)83/D (Civ-I), dated 11 January, 1984, regarding allowances and facilities for civilian employees of the Central Government serving in the States and Union Territories of North-Eastern Region, which inter-alia, conveys the decision of the President in regard to tenure of posting/deputation in the North-Eastern Region comprising the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram to the following effect: -

"There will be a fixed tenure of posting of 3 years at a time for officers with service of 10 years or less and of 2 years at a time for officers with more than 10 years of service. Periods of leave, training, etc. in excess of 15 days per year will be excluded in counting the tenure period of 2/3 years. Officers, on completion of the fixed tenure of service mentioned above, may be considered for posting to a station of their choice as far as possible."

9. The learned counsel for the petitioners pointed out that there were 10 persons senior to the applicant Shri V.M. Thareja, who had not been posted to a tenure station, namely, Gauhati, and that the guidelines were violated since no volunteers were called for and no seniority list of persons for transfer had been prepared by the Department. He further stated that out of the total strength of 60 officials, excluding female members, as many as 22 persons

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had been transferred. He also pointed out that whereas this Tribunal had stayed only the transfer of Shri V.M. Thareja, vide its order dated 10.6.1986, the respondents on their own had stayed the operation of the entire order, vide AHQ Signal dated 12th June, 1986. There was no justification for staying the operation of the entire order, which showed that there was no urgency for carrying out these transfers. On 23rd July, 1986, a second signal was issued to the effect that operation should be stayed only in respect of four persons viz., Shri V.M. Thareja, Shri D.V. Singh, Shri P.D. Kaushik and Shri Ajit Singh, who were affected in so far as transfers from Delhi to Gauhati and vice-versa were concerned. It was alleged that the respondents wanted to favour Shri D.V. Singh.

10. The learned Addl. Standing Counsel for the respondents pleaded that the transfers to Gauhati had been made only with a view to accommodating persons who had completed their tenure there and had also represented for their transfer from Gauhati either to Delhi or to a station near Delhi on compassionate ground. She also stated that Shri Thareja had the longest stay in Delhi as compared to others now posted in Delhi and that in his 26 years of service, he had never served at a tenure station.

11. We have carefully considered the various submissions made by both sides and find that the transfers which are the subject-matter of these three petitions cannot be held to be arbitrary, punitive or made out of malice or in flagrant violation of the guidelines. Two officials had necessarily to be posted to Gauhati to relieve two other officials who had completed their tenure at Gauhati and had represented for their posting at or near Delhi (S/Shri Ajit Singh and P.D. Kaushik). The applicant Shri



Thareja was posted at Delhi in April 1983 and he along with Shri D.V. Singh, who had the longest tenure in Delhi, were ordered to be posted to Gauhati. One Shri D.P. Dhawan, who had come to Delhi in May, 1983 was justifiably left out since he was due for retirement in June, 1987. Shri Thareja has been in service since 9.2.1961 and in nearly 26 years of his service, he has never been posted to a tenure station. He has still 12 years of service left before retirement. Since the transfers have been made to Gauhati in order to cater to the requirements of persons who had to be transferred from there, there is no violation of the guidelines. Para 4 of the guidelines also gives discretion to the respondents to transfer the personnel in the exigencies of service or on administrative grounds. In so far as guideline in para 2 is concerned regarding transfers not to be made over long distances as far as possible, it was brought to our notice that the Composite Food Laboratory units were located only at eight or nine stations, which are spread over long distances. In regard to the guideline regarding option of volunteer's being sought for, although this was not followed by the respondents, their subsequent action after issue of the order in calling for volunteers for Gauhati shows that the only official Shri Ramesh Chander, posted at Lucknow, who gave his option for Gauhati, withdrew the same on 2nd September, 1986 and as the things stand at present, there are no volunteers available for being posted to Gauhati. Non-compliance on the part of the respondents in following the guideline regarding calling for the names of volunteers would not vitiate the transfers to the extent of rendering them illegal when they can be sustained on the ground of length of service at a particular station and exigencies of service, besides compassionate grounds.

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12. The applicants in petition No. OA 591/86 had joined service in 1966. Shri N.D. Gulati, who joined service on 3.5.66 was posted at Army Headquarters, Moradabad, Lucknow and Madras and has been in Delhi since 9.4.83. Shri C.S. Shivnani, who joined service on 30.4.66, had earlier been posted in Army Headquarters, Madras, Delhi, Lucknow, Bombay and again in Army Headquarters since 1st May, 1983. Both of these applicants having been posted in Delhi for more than three years, their transfers to Calcutta cannot be treated as arbitrary or bad in law.

13. The applicant in petition No. OA 600/86, Shri Satish Kumar Wahi, who was appointed on 28.7.1966 had earlier served in Army Headquarters, CFL Delhi, Lucknow, Calcutta, Gauhati and again in Lucknow, where he has been working for more than three years. His transfer to Bombay cannot be considered as punitive or arbitrary or in flagrant violation of the guidelines. As regards his plea that his wife is also posted at Lucknow for a number of years, it would be open for her to apply for her transfer also to the place of her husband's posting to the concerned Department who may consider the request sympathetically in accordance with the Government policy on the subject.

14. In Jenamani Prafulla Kumar Ray v. State of Orissa and others (1981 (1) - SLJ - p.506), the Orissa High Court held as follows: -

"12. The administrative instructions contained in Annexure-7 do not create any right in the petitioner to say that he cannot be transferred. They are subject to exigencies of administration. There is no rule which confers any right on a Government servant to stay in any particular station for a particular period. His convenience has, no doubt, to be taken into consideration by

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the appropriate authority, but that must always yield to the exigencies of public service."

15. In Sudhir Prasad Jain v. Union of India and others (A.T.R. 1986 (2) C.A.T. 304), it was held by us that the transfer order made in exigencies of service and being an administrative order can hardly be interfered with as held in several judgments of the Supreme Court and also in a recent judgment of the Tribunal in K.K. Jindal v. G.M., Northern Railway (ATR 1986 (1) CAT - PB-304). This is more so where the allegations of mala fide are devoid of material particulars.

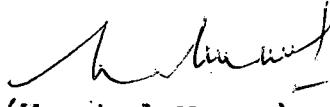
16. In B. Varadha Rao v. State of Karnataka and others (AIR 1986 S.C. 1955), the Supreme Court held as follows: -

"The norms enunciated by Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the Government servants."

16. In view of the discussion in the preceding paragraphs and the rulings referred to above, the transfers of the applicants to their respective stations cannot be considered as arbitrary, punitive or made out of malice or as being violative of Article 14 of the Constitution. As such, all the three petitions are liable to be dismissed. However, after transfer order of Shri Thareja was stayed by this Tribunal, the respondents themselves had stayed the transfer of all the petitioners and the petitioners admitted their wards in the schools at Delhi / Lucknow. Subsequently this Tribunal also stayed the operation of the transfer order in respect of all the applicants and the wards of the applicants are studying at their present places of postings

Giving effect to the orders of transfer now will disrupt their studies and cause hardship to the applicants and their families. In the circumstances, while all the three petitions are dismissed, a direction shall issue that the operation of the transfer order of all the four applicants to their respective places of postings shall not be carried out before 30th April, 1987.

17. The applications are allowed to the limited extent indicated above. There shall be no order as to costs.


(Kaushal Kumar)
MEMBER (A)
23.1.1987.


(K. Madhava Reddy)
CHAIRMAN
23.1.87.