

(Correction carried out in order dated 11.1.2005 in OA 2134/2005,  
as per orders dated 20.7.2005 in RA 53/2005 in OA 2134/2004)

*(Signature)*

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A. NO. 2134/2004**

**New Delhi this the 11th day of January, 2005**

**Hon'ble Mrs. Meera Chhibber, Member (J)**

Durga Dutt Saini,  
Section Officer, Group 'C',  
Area Accounts Office (Pay),  
Western Command,  
New Delhi.

.... Applicant.

(By Advocate Shri E.J. Verghese)

Versus

1. The CGDA, West Block V, R.K. Puram, <u>New Delhi.</u>	2. PCDA, Western Command Chandigarh.
3. The DCDA, Area Accounts Office (Pay), <u>Delhi Cantt-110010.</u>	
4. Shri Himanshu Shanker, DCDA, Area Accounts Office (Pay), <u>Delhi Cantt-110010.</u>	

(By Advocate Shri Anil Singal, proxy for Mrs. P.K. Gupta)

**O R D E R (ORAL)**

By this O.A., applicant has sought the following reliefs:

- “(a) Allow the application under Section 19 of the Central Administrative Tribunal's Act 1985 with cost.
- (b) Quash and set aside the transfer order/relieving order 12/8/2004.
- © Restraining the respondents from further harassment and punishment.

And

- (c) Any other order this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case”.

2. It is submitted by the applicant that on his request, he was transferred from Port Blair to Delhi Cantt, on 21.10.2002 as per his choice station, Port Blair being a hard area.

He was posted in the Area Accounts Office, Delhi Cantt and thereafter posted in the Medical Group by the then Deputy Controller / in-Charge of the office, Mr. Amit Prasad in April, 2003. Applicant had been working to the entire satisfaction of his superiors and had been given appreciation letters as he always worked with sincerity and there was never any occasion of complaint against him.

3. It is submitted by the applicant that in December, 2003, Respondent No. 4, Mr. Himanshu Shanker, DCDA asked the applicant to give Rs.10,000/- as his share, on the plea that the same amount was being given to the earlier DCDA from the Medical Group. When applicant expressed his inability to be a part and parcel of such nefarious activities, it was not liked by Respondent No. 4. Within a week, applicant was transferred from the Medical Group but on his protest he was retained for one month and finally in March, 2004, he was shifted from the Medical Group. He has further submitted that Respondent No. 4 was also the Estate Officer and since the complaints with regard to the quarters were not being redressed, he had also given a complaint to the PCDA (WC), Chandigarh, on 18.04.2004 with a copy to the Estate Officer i.e. Respondent No. 4 (Page 18) which further annoyed Respondent No.4. His grievance now is that vide order dated 12.08.2004, applicant was relieved from his duties in the office of Area Accounts Office for joining PCDA (R&D) but without even giving him a copy of transfer order which itself shows that he has been shunted out by way of punishment. He has further submitted in the rejoinder that the office from where he had been transferred had already shortage of 6 Section Officers, the total authorized strength being 12 whereas in the office of PCDA (R&D), the strength of the supervisory staff had become surplus after the posting of applicant because the authorized strength of supervisory staff therein was 18 and all 18 posts were already filled up and by posting him there, he had become surplus, which is evident from the fact that till date he has not even been given the permanent pass but his entry is allowed only through a temporary pass. He has thus submitted that there is no justification at all as to why applicant should be transferred from the office of AAO to PCDA (R&D).

4. Respondents on the other hand have opposed this O.A. by submitting that transfer is an incidence of service. No Government servant has a vested right for posting at a particular place or station. Transfer of an individual on administrative grounds or in public

interest is not to be interfered with unless it is against the statutory rules and is mala fide. It is settled by now that it is the employer who will decide where a public servant could be transferred and in ordinary course, the courts have no jurisdiction to interfere unless the transfer is mala fide. They have submitted that no mala fide, malicious, vitiated, biased and arbitrary inter-command transfer has taken place as applicant was selected for local transfer to the office of PCDA (R&D) on administrative grounds. Since applicant, having an all India liability of transfer, had been transferred from one office to the other in Delhi itself at a distance of 24 KMs, it can hardly be a ground for challenging the transfer order. They have submitted that applicant was shifted from Medical Group on 27.02.2004 as a routine matter in course of re-shuffling of groups among supervisory staff. As far as the complaint regarding his quarter is concerned, they have submitted that that has no relevance to the transfer. They have thus submitted that since his transfer is due to administrative requirement, therefore, it calls for no interference. The O.A. may, therefore, be rejected.

5. I have heard both the counsel and perused the pleadings as well. I am fully aware of the various judgments given by the Hon'ble Supreme Court wherein it is held that courts should not interfere in a routine matter in cases of transfer unless it is proved to be a case of mala fides or the transfer is stated to be contrary to the statutory rules. However, in this case, it is seen that in para 9 of the O.A. applicant has categorically stated that he has been relieved from his post in Area Accounts Office, Delhi Cantt by the impugned order without serving him a copy of the transfer order. He has also stated number of other incidents to allege that Respondent No. 4 was prejudiced against him as he had not danced to his tune but in reply, respondents have given a very vague denial. They have not denied the averment made by the applicant that he has been relieved without even giving him a copy of transfer order. It is correct that Department has a right to transfer the employee as per their requirement but none the less it is incumbent on the part of the Department to at least serve a copy of the transfer order on the employee before he is relieved. Respondents have tried to put the cart before the horse by first relieving the applicant and then giving him a copy of the order at a later stage. Not only respondents have not disputed this averment but even from the order which is annexed by the

respondents along with their counter affidavit on page 15, it is seen that the order dated 19.07.2004 was not even marked to the person concerned which proves the contention of the applicant that the transfer order was not even served on him. No justification has been given by the respondents as to why this transfer order was not served on the applicant before relieving him from his place of posting. In normal course, I would not have interfered in the matter as the applicant has been transferred from one office to the other in Delhi itself but once again applicant has stated categorically in para 19 of the O.A. that neither he was senior most nor junior most in the Western Command Offices in Delhi and Delhi Cantt yet he had been transferred out while number of other officers are continued in the office without disturbing them. He has also stated in the O.A. that he has been transferred from the Area Accounts Office within one year and nine months only while number of officers who are serving in these offices for many years are still continued in the same office. The names of such officers are also given categorically in para 16 of the O.A. Once again it is seen that in the counter affidavit, no specific reply has been given to the said averment. The above facts indirectly show that the way applicant has been relieved has not been done in a normal routine manner which itself is sufficient to term the relieving of applicant as arbitrary. In normal course, if a person is transferred, the least that is required by the Department is to give him the transfer order and then relieve him in a normal manner. The very fact that the applicant has been relieved without even giving him a copy of the transfer order is sufficient to hold that the transfer order has not been passed in a normal manner. Therefore, the transfer order and the relieving order dated 12.8.2004 cannot be sustained in law. Apart from above discussion, it is also seen that applicant had filed his rejoinder, on 23.12.2004 and in the rejoinder it is stated specifically that in the office of PCDA (R&D) applicant has been posted over and above the sanctioned strength of supervisory staff whereas in the office of Area Accounts Office from where he has been transferred, is already having shortage of 6 Section Officers. Respondents have not even bothered to controvert these averments, which once again show that there was no justification to transfer the applicant from the office of Area Accounts Office, Delhi Cantt to the PCDA (R&D).

6. Counsel for the applicant had relied on a judgement given by Chandigarh Bench in OA 1012-PB-98 to state that in similar circumstances the transfer of the applicant therein was quashed and set aside. However, in transfer matters, each case has to be decided on the given facts of the case and no judgment can be taken as a precedent to decide other case. However, I do not wish to go on the question of mala fides in this case because even otherwise as discussed above, the order of transfer and relieving cannot be sustained in law. Accordingly, the order dated 19.07.2004 and 12.08.2004 are quashed and set aside. I am informed that applicant had joined in the office of PCDA (R&D) because he was already relieved from his earlier office and no stay had been granted by the court. Since the impugned orders have already been quashed, respondents are directed to allow the applicant to join his duties in the Area Accounts Office, Delhi Cantt. However, liberty is given to the respondents that in case there are any valid administrative grounds and it is still felt necessary to post the applicant to some other office, they shall pass necessary orders, in accordance with law.

7. With the above directions, this O.A. is disposed of. No order as to costs.

*Sd/-*  
**(MRS. MEERA CHHIBBER)**  
**MEMEBR (J)**

'SRD'

Note:

(1) Corrected copy of order with correction carried out as per order dated 20-July-2005 in R.A. No. 53/2005 in O.A. No. 2134/2004, by deleting lines 5 to 14, in Page 6/10, Page 5 of the judgement dated 11-1-2005, opening with the sentence "In the instant case, and, ending with, accepted by the said office".

(2) Order dated 11-January 2005 in O.A. No. 2134/2004, to be read with order dated 20-July-2005 in R.A. No. 53/2005 in O.A. No. 2134/2004.

*Arora*  
21/9/05.  
D. R. (J)

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RJ

him a copy of the transfer order is sufficient to hold that the transfer order has not been passed in a normal manner. Therefore, the transfer order and the relieving order dated 12.8.2004 cannot be sustained in law. Apart from above discussion, it is also seen that applicant had filed his rejoinder, on 23.12.2004 and in the rejoinder it is stated specifically that in the office of PCDA (R&D) applicant has been posted over and above the sanctioned strength of supervisory staff whereas in the office of Area Accounts Office from where he has been transferred, is already having shortage of 6 Section Officers. Respondents have not even bothered to controvert these averments, which once again show that there was no justification to transfer the applicant from the office of Area Accounts Office, Delhi Cantt to the PCDA (R&D).

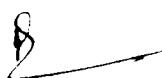
6. Counsel for the applicant had relied on a judgement given by Chandigarh Bench in OA 1012-PB-98 to state that in similar circumstances the transfer of the applicant therein was quashed and set aside. However, in transfer matters, each case has to be decided on the given facts of the case and no judgment can be taken as a precedent to decide other case. In the instant case, applicant has alleged mala fides against Respondent No. 4 and had also made him party by name, yet Respondent No. 4 has not even bothered to file his own personal affidavit, which means that he has not even bothered to deny the allegations made in his personal capacity. Therefore, on this ground also, the O.A. needs to be allowed. Although the official respondents have stated that no time, date, etc. has been stated by the applicant when Shri Himanshu Shankar had demanded his share of money but if mala fides are alleged against an individual and he is made party by name, the least that is expected from the said officer is to at least file his own affidavit and deny the said allegations. In case no affidavit of rebuttal is filed, the allegations are deemed to have been accepted by the said officer. However, I do not <sup>not see</sup> <sup>not see</sup> go on the question of mala fides in this case because even otherwise as discussed above, the order of transfer and relieving cannot be sustained in law. Accordingly, the order dated 19.07.2004 and 12.08.2004 are quashed and set aside. I am informed that applicant had joined in the office

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7. With the above directions, this O.A. is disposed of. No order as to costs.

  
**(MRS. MEERA CHHIBBER)**  
**MEMEBR (J)**

'SRD'

NOTE<sup>o</sup>

As per Order dated 20-July-2005 in R.A. No. 53/2005 in O.A. No. 2134/2004, lines 5 to 14 in Para 6 on Page 5 of the judgement dated 11-January-2005, opening with the sentence, "In the instant cases, applicant has alleged malafides against Respondent No.4, and ending with "accepted by the said office." - Deleted.

  
21/9/05.  
D.R. (T)