

*Transferred to*  
*yes*

(5)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

**O.A. No. 159 OF 1991 198**  
**TAX NOX**

**DATE OF DECISION 9-7-1991.**

Dr. N.K. Ajmera. Petitioner

Mr. M.R. Anand. Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents.

Mr. M.R. Raval for Mr. P.M. Raval Advocate for the Respondent(s)  
for Respondent No. 1  
Mr. J.C. Seth for Resp. No. 2 & 3.

**CORAM :**

**The Hon'ble Mr. M.M. Singh, Administrative Member.**

**The Hon'ble Mr. R.C. Bhatt, Judicial Member.**

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 it needs to be circulated to other Benches of the Tribunal. *yes*

(6)

Dr. N.K. Ajmera,  
Medical Officer-In-charge,  
Kakrapar Atomic Power Project  
Hospital, P.O. Anumala,  
Via: Vyara, Dist: Surat.  
Pin : 394651.

..... Applicant.

(Advocate: Mr.M.R.Anand)

Versus.

1. Union of India  
(Notice to be served  
through the Secretary,  
Department of Atomic Energy,  
Central Secretariat,  
New Delhi).
2. M.S. Rao  
Director ( Personnel)  
Nuclear Power Project,  
16/20th Floor,  
World Trade Centre,  
Cuff Parade,  
Bombay - 400 005.
3. Chief Project Engineer,  
Kakrapar Atomic Power Project,  
Nuclear Power Corporation,  
P.O. Anumala, Via: Vyara,  
Dist: Surat. .... Respondents.

(Mr.M.R.Raval for Mr.P.M.Raval,  
learned counsel for the respondent No.1,  
Mr.J.C. Seth, learned counsel for  
respondents No. 2 & 3.)

J U D G M E N T

O.A.No. 159 OF 1991

Date: 9-7-1991.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The first issue in this original application filed under section 19 of the Administrative Tribunals Act, 1985 (hereinafter, the Act) for our decision is whether a member of the Civil Services of the Union on deputation to a Corporation owned or controlled by the Government of India which has not been placed under the jurisdiction of the Central Administrative Tribunal (hereinafter, the Tribunal) by issue of notification

H M J

under section 14(2) of the Act, can invoke the jurisdiction of the Tribunal for adjudication of any dispute arising, in this case on account of his transfer.

2. The second issue to arise for adjudication in case our answer to the above first issue is in the affirmative, is whether the impugned transfer order is valid.

3. In the application filed, a declaration has been made that the subject matter of the order against which redressal is wanted is within the jurisdiction of the Tribunal. The impugned order of transfer dated April 22, 1991 appears on the letter head of the Nuclear Power Corporation (hereinafter NPC) which also mentions the Corporation as " A Government of India Enterprise". Averments in para 6.1 of the application are that the applicant initially joined the service as Medical Officer in the grade of Scientific Officer in the year 1983 and in February 1988 he was promoted to the post of Scientific Officer in the senior scale. In May 1989 the applicant was transferred from Kota to Kakrapar in Gujarat. He joined at Kakrapar in August 1989. Averment in para 6.9 of the application is that the applicant has still not been absorbed in NPC and he is a Government of India employee and that he is governed by the Government of India policy in the matter of transfer. We are put to reading paras 6.1 and 6.9 together to infer that the petitioner had joined initially in service as Medical Officer with the Government of India. Para 13 of the reply of the respondents which covers para 6.1 of the application merely says that the applicant was appointed in the lower grade in 1983.

H. L

(A)

In para 1 of the rejoinder is stated that the applicant is still a Government of India employee on deputation with the NPC. From the total pleadings on the two sides and submissions made by the learned counsel for both the parties, it has became clear that the undisputed position is that the applicant who started his service in a Government of India Department is on deputation to the NPC where he is not get absorbed in NPC service and he retains his lien in his parent cadre.

4. When the original application was heard for admission, a Bench of this Tribunal had admitted the application and granted ad interim relief in terms of status quo till 5th June, 1991. Ad interim relief was subsequently continued till further orders as the respondents wanted to file reply in interim relief. With the reply filed, the applicants sought time for rejoinder. The time was granted and the rejoinder came to be filed. As the learned counsel were ready, we heard the matter finally.

5. Learned counsel Mr. Anand for the applicant fiercely canvassed for his submission that this Tribunal has jurisdiction. He even found the written reply of answering respondents deliberately false in some particulars and attracting penal provisions of section 199 IPC as stated in the rejoinder also and Tribunal asked to consider prosecution. Mr. Seth, learned counsel for respondents, answered equally strongly. If we symbolise the law on the subject by a straightline, the two learned counsel firmly stood themselves each opposite the other at the two ends of the straight line with no excluded middle between them except the relevant provisions of the Act.

H H L

6. Chapter III of the Act contains the provisions on the jurisdiction, Powers and Authority of Tribunal. Power and authority flows from jurisdiction. Exercise of power and authority without jurisdiction is a nullity and therefore to be strictly avoided. Conversely there should be no hesitation to exercise power and authority if jurisdiction exists. The Supreme Court had, <sup>in</sup> Civil Appeal No. 6044 of 1990 (H.N. Patro Vs. The Ministry of I & B) observed in its order that "The Ministry of Information & Broadcasting, which is a wing of the Union of India, would be presumed to be aware of the provisions contained in the Administrative Tribunals Act, 1985, which read with Article 323 A of the Constitution of India bars the jurisdiction of the High Court and, therefore, it should not have gone before the High Court invoking exercise of its jurisdiction. The High Court should also have been careful to satisfy itself that it had jurisdiction to deal with the matter, and make an order nullifying the direction of the Tribunal". Thus due care will be expected from the applicants and also from this Tribunal when exercising jurisdiction.

7. Section 14, the first section in the above Chapter III, which fixes the jurisdiction, powers and authority of the Central Administrative Tribunal is reproduced below:

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal. - (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court (\*\*\*) in relation to -

H H J

(a) recruitment, and matters concerning recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning -

- (i) a member of any All-India Service; or
- (ii) a person (not being a member of an All-India Service or a person referred to in clause(c)) appointed to any civil service of the Union or any civil post under the Union; or
- (iii) a civilian (not being a member of an All-India Service or a person referred to in clause (c)) appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation (or society) owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause(iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment.

(Explanation. - For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.)

xxxxxx

xxxxxx

xxxxxxxx

(2) The Central Government may, by notification,

H. H. J.

(11)

apply with effect from such date as may be specified in the notification the provisions of sub-section (3) of local or other authorities within the territory of India or under the control of the Government of India and to corporations (or societies) owned or controlled by Government, not being a local or other authority or corporation (or society) controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations (or societies).

xxxxxx

xxxxxxxx

xxxxxxxx

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation (or society), all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to -

- (a) recruitment, and matters concerning recruitment to any service or post in connection with the affairs of such local or other authority or corporation (or society); and
- (b) all service matters concerning a person (other than a person referred to in clause (a) or clause(b) of sub-section(1) ) appointed to any service or post in connection with the affairs of such local or other authority or corporation (or society) and pertaining to the service of such person in connection with such affairs."

8. In the above law, the jurisdiction stands on two legs. The first leg is the subject matter of the dispute or complaint which could be about recruitment and concerning matters or service matters. The second

H. H. L

leg is the employer pertaining to service with whom the dispute or complaint has arisen. An applicant has to satisfy that his case has both the legs.

9. In the case before us, transfer of the applicant has given rise to the dispute. What the phrase 'service matters' means in the above law is set out in clause(q) of Section 3 of the Act. Though the word 'transfer' does not figure in it, the subject is comprehended under subclause (v) of clause (q) which is residuary in nature with words 'any other matter whatsoever'. We need not spend time here to analyse how 'transfer' is included in 'any other matter whatsoever'. Firstly, there is no dispute between the parties on ~~this~~ subject. Secondly, the issue is not res integra. Thus, the application satisfies that subjectwise, it has a leg visualised above.

10. Coming to the question of the affairs in connection with which a person raising a dispute is employed, the various authorities from the Union of India to a society can be, for facility of understanding and consistently with the scheme of the above provision of the Act, grouped into three. They are :

(A) Union or any State.

(B) Local or other authority within the territory of India or under the control of the Government of India.

(C) Any Corporation or society owned or controlled by the Government.

11. Jurisdiction of the Tribunal in case of (A) above, is as beaming and clear in the provisions of the above section 14 as a light house which members of All-India Services, members of the Civil Service of the Union and

15

holders of Civil post under the union and civilians filling a post in defence services have been availing of right from the commencement of the Tribunal by the provisions of the Act itself. With regard to (B) and (C) above, the Tribunal gets the jurisdiction for adjudication only if the Central Government has issued a notification under subsection (2) to apply to the organisation or authority in question the provisions of subsection (3) of section 14 above.

12. Both sides agree that such a notification has not been issued for NPC. Hence NPC does not fall under the Tribunal jurisdiction. Now authorities (B) and (C) may have on their rolls employees they recruited and employees on deputation to them from (A), as is the case before us. Conversely, (A) can have on its rolls employees on deputation from (B) and (C). Both these possibilities are taken care of in the above provisions of section 14.

13. We should at this stage refer to the submission of the learned counsel in this regard. Mr. Anand for the applicant submitted that the Office Memorandum dated September 4, 1987 of Department of Atomic Energy, Government of India, which spells out the terms and conditions regarding transfer of personnel to NPC, says that such staff will continue to be Government servants till absorbed by the NPC and CCS(CC&A) Rules will be applicable to them. He relied upon *N. Sripatha Rao and others V/s. Union of India and others, (1991(15) ATC 389)* and on *Rohtas Industries Ltd. & Another V/s. Rohtas Industries Staff Union and others, (1976 SCC (L&S) 200)*. Mr. Seth on the contrary submitted that as the applicant is posted in the NPC albeit on deputation and serving for the affairs of the

(W)

corporation, the dispute raised will not fall under the Tribunal for jurisdiction. He and learned counsel in Mr. Raval for respondent no. 1/<sup>in</sup> fact canvassed that with no notification under subsection 14(2) of the Act issued, the Tribunal has no authority to even issue any order or direction to the NPC and, that being the case, the Tribunal has no powers to adjudicate in the dispute.

14. The judgment of the Tribunal in Sripatha Rao case, supra, does not help the applicant. That dispute was raised by holders of civil posts under Government of India on deputation to the Tribunal where also they remained Government of India employees. It was not a dispute by such employees on deputation to a corporation owned or controlled by the Government. We agree with Mr. Seth that the judgment is not applicable to the present case but not for the reasons argued by Mr. Seth. Mr. Seth argued that the observations of the Tribunal in the judgment were, in the head notes, mentioned as obiter and that the judgment did not discuss the implications of "service matters". Mr. Anand relied on Rohtas Industries case, supra, to submit that powers under Article 226 of High Courts can effect any person, even a private individual and may be available for any purpose, even one for which another remedy may exist. He urged that this Tribunal could exercise powers under Article 226 to affect the NPC and that such powers can be exercised despite any representations made by the applicant. We respectfully agree with this ratio laid down by the Supreme Court. That this Tribunal can exercise powers under Article 226 in the ambit of provisions of Administrative Tribunals Act is no more in dispute. That also partly answers respondents' counsels' arguments that this

H H J

15

Tribunal cannot issue orders to NPC. It is clear from the judgment that this argument of the respondents' counsel has no basis.

15. Subsection (1) of section 14 would, for the purposes and the services stipulated in it, continue to apply to these services even if their members raise the dispute pertaining to their service in connection with, to quote the relevant portion of the subsection, the affairs "of any corporation or society owned or controlled by the Government". As such employees will already be under the jurisdiction of the Tribunal, notification under 14(2) which activates 14(3) is not to bring such Corporation with regard to them, the deputationists, under the Tribunal jurisdiction though it will the other employees of the corporation. That is why 14(3)(b) has the words "all service matters concerning a person other than a person referred to in clause (q) or clause (3) of Subsection (1)....." in it.

16. It should be noticed that 14(1)(c) gives jurisdiction to Tribunal on persons from such corporation or society whose services have been placed at the disposal of Central Government. The reverse happening, namely of services of members of AIS and other civil services of the Union and holders of civilian posts being placed at the disposed of a corporation, is comprehended by above discussed provisions of subsections 14(1) and 14(3). When corporation employees on deputation to Government of India can invoke the jurisdiction of the Tribunal, the counter-balancing provision of law should be that Government of India employees when on deputation to corporations should also be able to invoke the jurisdiction of the Tribunal.

H M S

(V)

As is clear from our above discussion, such arrangement exists in the provisions of section 14.

17. We therefore hold that the dispute the applicant has raised in the original application falls within the Tribunal jurisdiction for adjudication. The first issue we framed in the begining is answered in the affirmative.

18. Coming to the second issue, the applicant's case is that he was chosen for transfer to Kakrapar where he joined in August 1989 because he had in Kota lacked to quote from the application situation even more different than the situation in Gujarat". He had helped set up a hospital at Kota and took up the work of setting up one at Kakrapar and more than a third of the work is over. His endeavour earned an appreciation letter and the remaining work is to be completed in the next 2 or 2½ years for which the work is going on in full swing. However, in this critical phase of the progress of the hospital project, the applicant heard the "rumour" that Dr. P.K. Sinha and Mrs. Dr. Sinha (hereinafter Sinhas) who were posted to Kota in the applicant's place on transfer from Kakrapar wanted to come back to Gujarat raising fears of the applicant's transfer. The grounds advanced against the order consist of: (i) that the policy and practice of the Union of India which applies to him on deputation to NPC is to keep medical officers at one place at least for a period of five years and the applicant himself had a six year spell at Kota and that he is being discriminated by unequal application of this policy as compared to Sinhas; (ii) that the applicant sent representation dated 26.4.1991 against the transfer order pointing out that he is required to remain at Kakrapar

H H L

(19)

for another two to three years so that he can complete the project he started; (iii) that is victimised in order to accomodate Sinhas in Gujarat as Sinhas have difference of opinion with somebody at Kota and therefore wanted transfer from Kota and even if that was so, Sinha could be transferred to Kaiga where vacancies exist for both; (iv) that his transfer is against public interest of the project.

19. The applicant relies on Supreme Court judgment in B. Vardha Rao (AIR 1986 SC 1955) in which frequent, unscheduled and unreasonable transfer has been deprecated as they affect family and cause irreparable harm to government servants by disturbing children's education and causing other complications and the applicant has two schoolgoing children. In his representation dated 26.4.1991 obviously made after the date 22.4.1991 of the impugned transfer order the credit for informing about it is given by the applicant to his "friend circles", an additional objection raised is that the applicant holds a senior position and the warrant of the Department required that he should have been informally informed about it. In it, the transfer is described as causing "considerable indignity and a punishment to the sincere work" of the applicant.

20. The answering respondents have in particular referred to applicant's representation dated 26.4.1991 having reached respondent No. 2 on 4.5.1991 before which the premature application in this Tribunal resulted in ex parte stay order dated 2.5.1991. The allegation of any favour to Sinhas is denied by clarifying the process and level of decision. The respondents say that the hospital building at Kakrapar has already been completed and occupied on 26.1.1991 as per schedule and most of

18

the hospital equipment already indented whereas Kaiga is upcoming where facilities including of hospital have to be established on priority basis. The only medical officer at Kaiga had indicated that he would even resign and he resigned, as submitted by Mr. Seth at the time of arguments. It was decided to transfer the applicant to Kaiga to utilise his experience in setting up hospital and his professional acumen. It is averred that the policy of Government of India on transfers is not applicable to NPC which is setting up projects worth corres of rupees for production of thousands of megawatts of electricity for fulfilling which commitment transfers and promotions will be NPC's outlook. It is asserted that the applicant's transfer is on administrative grounds of the NPC, in public interest and based on objective considerations to utilise applicant's expertise at Kaiga. Bickering on grounds of superiority between Sinhas and a Dr. Rathor at Kota is admitted and reports in that regard have been produced. Sinhas' transfer is made to settle this problem at Kota. It is further averred that in the last eight years, the impugned transfer of the applicant is second. The Supreme Court judgment above relied upon by the applicant is also relied upon by the respondents in support of the impugned order and that in it both the High Court and the Supreme Court had dismissed the petition. The respondents also rely on the report AIR 1991 SC 532 and deny allegations of infringement of fundamental right, malafides. It is also averred that NPC's residential colonies are well provided with schooling arrangements and the impugned

h. h. J.

order of transfer is made in the begining of the academic session so that education at new place is not to pose any problem.

21. The applicant's rejoinder avers that the NPC has not framed transfer policy and the deputationist applicant is governed by the Government of India policy and the NPC cannot override Government of India's policy and that the reply shows that the impugned transfer is to satisfy the personal cause of Sinhas and the need to transfer Sinhas from Kota to end interpersonal bickening there is totally irrelevant of applicant's transfer to the issue. The impugned transfer is alleged as made for such extraneous considerations.

22. In their respective exhaustive arguments, the learned counsel took us to the pleadings and dwelt upon implications thereof. Mr. Anand argued that colour of administrative exigency has been given to the applicant's transfer in order to accomodate Sinhas who should have been transferred to Kaiga and not he to solve the problem of standoff between Sinhas and Dr. Rathod at Kota. He submitted that Dr. Sinha had set up the NPC hospital at Narora project and therefore, like the applicant, has the experience of setting up hospital. Kaiga project had started in 1989 and in case the applicant's services were required at Kaiga, the order of his transfer to Kaiga would have come to be issued not now but in 1989 if the same had been in administrative interest. There are seven posts of doctors at Kaiga and Sinhas could fill up two of these posts whereas the applicant will fill up only one. Mr. Seth for the respondents argued that Dr. Rathod was posted at Kota in 1990 after posting of

Sinhas to Kota. Though a specialist, Dr. Rathod has no hospital managerial experience. The applicant was called to Bombay in connection with his representation. However, he did not come to Bombay as he had in the meantime obtained ex-parte ad interim relief. Mr. Seth further argued that the courts have not to interfere in the internal management and transfer is a matter in internal management. He submitted that the administration considered the applicant more suited than Sinhas for the nature of work at Kaiga and that Sinhas have already reported at Kakrapar. He argued that the applicant has failed to substantiate the malafides which he merely alleged.

23. From the pleadings, submissions and arguments for both parties, it is clear that the question of transfer of the applicant has been contested from two aspects. The first aspect is the transfer of the applicant to Kaiga. The second aspect is the transfer of Sinhas to Kakrapar. We feel that these two aspects are separate but agitated as linked, involved and as if two sides of the same coin of transfer. It is clear from the pleadings and submissions that the NPC is carrying vacancies at Kota, Kakrapar and also at Kaiga. There is no dispute on this point. It is not that the transfer of the applicant from Kakrapar alone would have provided the required number of vacancies at Kakrapar to bring Sinhas to Kakrapar if the administration had been motivated by somehow accomodating Sinhas at Kakrapar. This view finds support in the contents of the impugned order dated 22.4.1991. Nobody has been posted vice anybody. Dr. Sinha is transferred from RAPS to KAPP in the status of Medical Superintendent. The applicant is only Medical Officer-in-charge KAPP and shifted to Kaiga in the same status. Mrs. Sinha's status of Medical Officer at RAPS is maintained to KAPP. Thus none of the two Sinhas are transferred to occupy the applicant's post or vice him. With vacancies available at Kakrapar, Sinhas could be accomodated at Kakrapar without ordering transfer of the applicant. It might perhaps have involved some administrative

adjustments with regard to ranks and posts on the basis of their comparative seniority. The question of transfer of Sinhas to Kakrapar therefore has to be related and involved only to the problem the NPC was facing at Kota. Our this view also takes into consideration that it is not the contention or case of the applicant that Sinhas could not be brought to Kakrapar without transferring the applicant from Kakrapar to Kaiga. Thus viewed, all the arguments and pleadings to show that the applicant was transferred to accomodate Sinhas at Kakrapar are liable to fall to the ground.

24. With the above, the aspect of transfer of the applicant to Kaiga has to be examined by itself and not as involved with Sinhas transfer to Kakrapar or as an unavoidable result of the same. Relevant for that is the argument of the applicant that the policy and practice of the Union of India on transfers applies to the deputationists. Here, we refer to the office memorandum dated September 4, 1987 on the subject of terms and conditions regarding transfer of personnel to the NPC. Para 3.1 of the office memorandum says that the staff placed on deputation to the NPC will continue to be Government servant till absorbed and will be governed by rules applicable to Central Government employees including CCS(CC&A) Rules. According to para 2 of this office memorandum, the manpower of the nuclear power board and the atomic power projects and atomic power station under its control shall be transferred on deputation to the NPC. The office memorandum nowhere mentions that for its internal administration and management with regard to such staff on deputation, the NPC shall be governed by the instructions of policy

of the Government of India. In any case, no instructions of the Government of India with regard to transfer have been shown to us by the applicant. However, it has been submitted that with regard to doctors, the policy is to keep them at one station for five years and the applicant had stayed at Kota for five years. But the example of himself cited by the applicant cannot be taken as enunciation of the complete policy on the subject and that the policy, presuming it exists, is in no case to be departed from come what may.

25. We would at this stage refer to Vardha Rao's case, *supra*, relied upon by both parties. The Supreme Court in this case observed that "Frequent transfer without sufficient reasons to justify such transfers cannot but be held as *malafide* and that a transfer is *malafide* when it is made not for professed purpose, such as in normal course or in public administrative interest or in the exigencies of service but for other purpose than is to accomodate another person for undisclosed reasons". We have observed before that if the purpose of administration was to accomodate Sinhas at Kakrapar as alleged by the applicant, the same could be achieved without transferring the applicant from Kakrapar. No material has been placed before us to show that the applicant's transfer to Kaiga is for reasons other than for setting up a hospital at Kaiga in which field, even according to the applicant's own claim, he specialises and excels. Even though Kaiga project started in 1989, the administration will be at liberty to decide on the basis of needs the stage at which it should take up the hospital project for setting and equipping. It will not be for us to

H. M. S.

19

go into that discretion of the respondent unless any contrary material is placed before us. No such material has been placed.

26. Both learned counsel relied upon some more precedents. E.P. Royappa Vs. State of Tamil Nadu (1974) 4 SCC 32) pertains to a member of the IAS who was transferred from the post of Chief Secretary to another post. The main question was whether the petitioner had the right to continue in the post from which he was transferred. Mrs. Shilpi Bose & Ors. Vs. State of Bihar & Ors. (AIR 1991 SC 532) is a case of request transfer in which the Court, alongwith on other points, observed that the courts should not interfere with transfer orders made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rules or on the ground of malafide. Mr. Seth also relied upon some precedents in Central Administrative Tribunal judgments. In none of these precedents, there is anything contrary to or inconsistent with the guidelines to Courts on the subject of transfers available in Supreme Court judgments.

27. In Union of India Vs. H.N. Kirtania (1989) II ATC 269) has been spoken the scope of judicial review in an order of transfer. The Supreme Court held that transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafides. No rules regarding transfer applicable to the applicant while in service in NPC have been shown to us. The allegations of malafides have been made but

M, h, J

21

as made

remain substantiated. Even these allegations remain unconvincing when we find as earlier above that Sinhas could, in case the respondents were so bent, be accommodated at Kakrapar without necessarily having to transfer the applicant. The applicant is one whereas a husband and wife team of doctors has been brought at Kakrapar. This shows that the respondents have sufficient manoeuvrability seeing the vacancies available. In this background, when it is submitted for the respondents that a costly sophisticated project is coming up at Kaiga where, for the needs of the project personnel and their families, need to set up a hospital has arisen and the applicant chosen for setting it up, we should hesitate to interfere with the impugned order of transfer especially when the respondents have (which is not denied) stated that residential and school facilities already exist at Kaiga and the new academic session is, seeing the date of the transfer order, to begin. It is not a case of frequent transfer of the applicant. He stayed at Kota for six years. He has completed about one year and ten months at Kakrapar.

28. We have already above not found acceptable the applicant's contention that he is governed by Government of India rules with regard to transfer even on deputation to NPC. From the conditions of deputation above, no such position or even its inference arises. On the contrary, a deputationist has to work in the adopted organisation in accordance with the felt needs and purposes of such organisation. Of course, a deputationist has the option to ask for repatriation. But saying that is not to say that the adopted organisation can transfer him only in accordance with the transfer policy framed by the source organisation for its own requirements.

H H J

25

29. After answering the first issue in the affirmative, on the second issue we hold that the applicant's prayer to quash and set aside the impugned order of transfer has no merits. The application therefore fails in that regard. The application is disposed off accordingly and the rule vacated with immediate effect. There are no orders as to costs.

R.C.B.

(R.C. Bhatt)  
Judicial Member

M. M. Singh  
21/7/91

(M.M. Singh)  
Admn. Member