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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 48/1992 & 49/1992.

T.A. No.

DATE OF DECISION 25-6-1992.

J. Manoharan &

Mansingh Radheshyam Yadav, Petitioner s

Mr. K.K. Shah,

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. Akil Kureshi,

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *no* X

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O.A.No. 48 of 1992.

J. Manoharan
Farm Hand, (SC1681),
Military Farm,
Ahmedabad.

..... Applicant.

Versus

1. The Union of India,
to be served through
Deputy Director General,
Military Farm,
Army Headquarters,
West Block No.3,
R.K. Puram
New Delhi.
2. The Dy.Director of Military Farm,
Headquarters, Southern Command,
Kirkee, Pune.
3. Mr. M.S. Malik,
Manager of the Military Farm,
Officer in Charge,
Ahmedabad.

..... Respondents.

O.A.No. 49 of 1992.

Mansingh Radheshyam Yadav
Peon (SC 1784)
Military Farm,
Ahmedabad.

..... Applicant.

Versus.

1. The Union of India, to be served through
Deputy Director General,
Military Farm, Army Headquarters,
West Block No. 3, R.K. Puram,
New Delhi.
2. The Dy.Director of Military Farm,
Headquarters, Southern Command,
Kirkee, Pune.
3. Mr. M.S. Malik,
Manager of the Military Farm,
Officer in Charge,
Ahmedabad.

..... Respondents.

COMMON JUDGMENT

O.A.No. 48/1992

&

O.A.No. 49/1992

Date: 25-6-1992.

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Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard learned advocate Mr. K.K. Shah for the applicants and Mr. Akil Kureshi, learned advocate for the respondents.

2. These two applications filed under section 19 of the Administrative Tribunals Act, 1985, are heard together by consent of learned advocates for the parties, as common questions arise in both the matters and the same are being disposed of by a common judgment.

3. The applicant of O.A.No. 48/92 is one J. Manoharan while the applicant of O.A.No.49/92 is one Mansigh Radhesyam Yadav. The applicant of OA 48/92 is a class IV employee working as Farm Hand under Respondent No.3 in the Military Farm at Ahmedabad, while the applicant of OA 49/92 is a class IV employee working as Peon under Respondent No.3 in the Military Farm at Ahmedabad. Both the applicants have challenged in their respective applications, the ^{office} order of transfer No. 103 dated 5th February, 1992 signed by the Respondent No.3 produced at Annexure A by which applicant of O.A.48/92 is transferred from Ahmedabad to Secundrabad while applicant of OA 49/92 is transferred from Ahmedabad to Pimpri, Pune as they have become surplus consequent to reduction

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in workload at the Military Farm due to procurement of processed milk from the Government Milk Scheme and that the transfer orders have been made in public interest which transfer order according to the applicants is malafide action on the part of the respondent No.3 and the applicants have prayed that the said order be quashed and set aside. The applicants have alleged in the respective applications that the impugned order of transfer Annexure A transferring them is a malafide action on the part of Respondent No.3, since there is a complaint against him for malpractice and the disciplinary case is made out by him against the applicants, that there is all possibility of finding the correctness of the complaint of the applicants and hence to avoid the same, the applicants are transferred at the instance of the respondent No.3. It is alleged by the applicants that on 5th March, 1990 a joint complaint was preferred by the Farm Hand against Respondent No.3 for his conduct and malpractice and as a result the applicant of O.A.48/92 was transferred on 19th March, 1990 to Bangalore but the same action was challenged by the said applicant in this Tribunal by O.A. 135/90 and that the Tribunal had granted interim stay against the transfer. The respondents had subsequently cancelled that transfer

order against the said applicant of O.A. 48/92.

The applicants have alleged that, thereafter, the Respondent No.3 got issued the chargesheet against the applicants under Rule 16 of the CCS Rules, 1965 and despite the case established on evidence by the applicants and instead of penalising the respondent No.3, the respondent No.2, Dy. Director of Military Farm, Headquarters, Southern Command, Pune joined hand with the respondent No.3 to save him and issued a penalty order of stoppage of increments. The applicants filed the appeal against it but no reply was given and the reminder was sent in which it was mentioned that on non-receipt of reply, the application would be filed before the Tribunal for seeking justice. It is alleged that the above period of notice now became over and respondent No.3 knew that the applicants were going to challenge the said order of penalty before this Tribunal and hence he got the transfer order passed by respondent No.2 by using his good offices. It is alleged that though the action of the respondents is malafide and arbitrary, but to show that the action is not arbitrary, the respondent No.3 is taking shelter by showing in the order as surplus. It is alleged that from the date of the appointment of the applicants, there is a work for milk distribution in the Farm and the same is being

carried since a decade and the Government has issued the direction to purchase the milk from the Government Dairy sometime in the year 1990 and since then the milk is being purchased from the Government and the work is being done regularly and there is no order abolishing or rendering the surplus staff and even if it is so the junior to the applicant like Shri Avdresh Pratap is to be sent out first. It is alleged that the action of the respondents is nothing but an eye wash to the entire issue and they want to throw out the unlikely persons like applicants who are watching the malpractice of the respondent No.3. It is contended that the action of the respondents is also punitive. The applicants have amended the application alleging that the impugned order produced by the respondents with their reply dated 25th January 1992 is not signed by one Shri V.P. Singh, because the order produced in the case of O.A.49/92 though signed by Shri V.P. Singh, the signature is totally different. It is alleged that unless the Affidavit is filed by Shri V.P. Singh that the signatures on both the orders of transfer are of his own, the order dated 25th January, 1992 creates a doubt about unguineness of the documents. It is also alleged that the respondent No.2 one Shri K.C. Changappa was on leave and

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Shri V.P. Singh was only officiating vice him and during that tenure respondent No.3 influenced Shri V.P. Singh and the impugned orders have been issued at his instance and the order requires to be declared frivolous, fabricated, ungenuine and malafide. It is also alleged that the plea of the respondents that the applicants are surplus is incorrect and malafide and punitive inasmuch as the quantum of work is the same and continuing while on the other hand DDMF HQ SC vide his letter dated 28th February, 1992 informed the respondent No.3 that the purchase and distribution of milk could be done on local basis through contractor. respondent wants to issue contract which It is alleged that / practice is arbitrary and unfair and to assign the Contract, the applicants could not be declared surplus and could not be transferred at a distance place.

4. The respondent No.3 has filed reply to both the applications taking almost identical contentions. He has denied that the order of transfer is malafide action on his part. He contended that the order was passed on the basis of the order dated 25th January, 1992 regarding the applicant of O.A. 48/92 and dated 27th January, 1992 regarding applicant of O.A. 49/92 from DINF HQ SC. He contended that the service conditions of the applicants are not affected as the services of the

applicants are liable to be transferred anywhere in India as per the appointment letter. It is contended that the application dated 5th March, 1990 written by the applicant of O.A.49/92 with the consultation of Farm Hand, the applicant of O.A.48/92 and got signed ^{from} other Group D staff of this Farm was without stating the facts ^{of the application by} getting the ^{who signed} signature of illiterate person without knowing the contents of the application and the charges about the conduct and malpractice against respondent No.3 were totally baseless and the applicants were not able to prove the same. It is alleged that the motive of the applicants was only to blackmail the administration for their personal benefits. It is alleged that thereafter the applicants gave joint application dated 24th October, 1990 by putting allegations against Respondent No.3 to Respondent No.2, that the respondent No.2 asked the applicants to prove the allegations levelled in the said application but they could not prove the allegations and hence they were charge sheeted for their misconduct and unbecoming of a Government servant and punishments were awarded by respondent No.2 after considering all the facts.

5. It is contended by respondent No.3 that due to reduction in workload at this Farm due to

procurement of processed milk from the Government Milk Scheme (Abad Dairy, Ahmedabad) and Government

policy to reduce the staff as economy measures, the orders of transfer are made by respondent No. 2 and no replacement has been required of the applicants.

It is contended that in the same way staff is

reduced at Military Farms at Madras, Bombay, Kamptee,

Jaipur, Jodhpur, Kota, Alwar, Nasirabad etc., and the respondent No.3 has denied that

the action of the respondents transferring the

applicants is either arbitrary or malafide. It is

contended that the applicants were surplus to the

requirement which was reported to the higher

authorities and in the public interest and to avoid

extra expenditure, the transfer order of applicants

has been issued by respondent No.2. It is contended

that so far one Avadesh Pratap Singh is concerned,

he is not a simple Farm Hand like the applicant and

as per his appointment letter, his seniority does not

count with the simple Farm Hands category since he

has been recruited for special job and he is

possessing Boiler Attendant certificate and that is

why he has been recruited by Farm Hand Boiler

Mazdoor. The respondent No.3 has contended that

he is executing the orders of the respondent No.2,

who is the competent authority to transfer the

Group D staff. It is contended that the establish-

ment has been reduced due to reduction in work load

and the two posts of Farm Hand have been rendered

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one Lalaram surplus. It is contended that Purushottam and the applicant of O.A. 48/92 are the juniormost Farm Hand as per the seniority list, and therefore, they are transferred. He has denied that the respondents had adopted pick and choose policy. He contended that the transfer order of Applicant of O.A. 49/92 is also legal and proper and contended that the post of peon had been rendered surplus. It is contended that the action is taken by the respondents purely in the public interest. It is contended that the Government has a paramount right to create/abolish the post having regard to exigency of the service.

6. The applicant of O.A.48/92 filed rejoinder controverting the contentions taken by the respondent No.3 contending that the reply filed by respondent No.3 cannot be considered as filed without prejudice of mind. He denied that he is junior-most and contended that there is no separate person or category as boiler mazdoor and even if ^{the} contention that Avadesh Pratap Singh is a boiler mazdoor is accepted, then as the ~~tired~~ milk is purchased, there is no requirement of boiler and therefore, he should be declared as surplus. The applicant of O.A.48/92 has also filed Additional Rejoinder contending that the seniority list annexed by the respondents is incorrect and there is no separate seniority of

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boiler Mazdoor and Farm Hand category. The applicant of O.A. 49/92 has also filed rejoinder controverting the reply filed by Respondent No.2. He contended that the transfer order is passed because of the complaint filed by the applicant against respondent No.3 and the respondent No. 3 is likely to face either transfer or enquiry from the higher officer. He has also stated that the Officiating Dy. Director Shri V.P. Singh is a clause person to respondent No.3 being the north Indian. He has stated that the order dated 25th January, 1992 is not signed by Shri V.P. Singh there is since / difference in signature of one order of 1992 25th Jan./ and the other dated 27th January, 1992. He contended that there is only one post of peon at Ahmedabad and ~~and~~ office can/work without any peon, and therefore, the reason of surplus staff so concerned is for the post of peon is/ totally baseless.

7. The respondent No.3 filed reply to the rejoinder in O.A. 48/92 contending that the allegations against him made by the applicants had not been proved inspite of giving time hence sheet by respondent No.2 and/a charge/was served on them and the punishment was awarded. He has contended that earlier the raw buff milk was being purchased from the local supplier, then the same/ was being

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separated/toned and pasteurised at this Farm, but now the readymade pasteurised milk is being purchased from the Milk Scheme (Abad Dairy, Ahmedabad) as per Government of India, orders and therefore, the workload is reduced upto a great extent resulting in surplus staff.

8. The applicant of O.A. 48/92 has filed further Affidavit stating that the seniority list shown by Respondent No.3 by separating the Farm Hand, Boiler Mazdoor etc. is not in term of document A-14 dated 31st January, 1990.

9. The respondent No.2, Shri V.P. Singh has filed reply contending that in the month of January from 23rd January to 28th January, he was officiating as a Deputy Director of Military Farm Southern Command since the Deputy Director, Military Farm, was not attending the duty during the said period. He has stated that the order of transfer dated 25th January, 1992 transferring the applicant of O.A. 48/92 from Military Farm Ahmedabad to Military Farm Sikerandabad and order dated 27th January, 1992 transferring the applicant of O.A.49/92 from Military Farm Ahmedabad to Military Farm, Pimpri, and Pune was also signed / passed by him as officiating Deputy Director of Military Farm Southern Command. orders He stated that both bear his signature and the said

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orders were necessary due to reduction in workload of Military Farm and hence the surplus staff was required to be accommodated elsewhere and hence the applicants were transferred. He denied that the said orders of transfer ^{were} either malafide or arbitrary as alleged and further denied that the same was made at the instance of respondent No.3. He stated that sometimes his signature differs from each other due to the condition in which the orders are signed and, therefore, there seems to be some difference in ~~both~~ signature on both the orders. He denied that the transfer orders are made by way of penalty and he denied that the same orders are vindictive and hence he prayed that the applications be dismissed.

10. The law relating to the transfer of the Government servant is now well settled by the latest decision of the Hon'ble Supreme Court in case of Mrs. Shilpi Bose & Ors. V/s. State of Bihar & Ors., AIR 1991 SC p.532 in which it is held "the Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory/statutory rule or on the ground of malafides. A Government/ servant holding a transferable post has no vested right to remain posted at one place or the other. Transfer

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orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions/orders, the Courts should not ordinarily interfere with the order, instead affected party should approach the higher authorities in the department". It is in the light of this latest decision of the Hon'ble Supreme Court that I proceed to examine ~~these~~ two cases. The learned advocate Mr. K.K. Shah for the applicants submitted that the applicants are ready to make representation to the highest authority and to withdraw ~~these~~ applications but with that condition that transfer be stayed till disposal of those representations and the opportunity be given also to the applicants to come before the Tribunal if they are aggrieved by the ultimate decision of the authority concerned. The learned advocate Mr. Kureshi for the respondents submitted that the applicants may make representations if they so desire and they may withdraw ~~these~~ applications unconditionally. He submitted that if this stay is granted even on withdrawal of ~~these~~ applications till the representations made in future are disposed of by the competent authority, and if again they are allowed to make such applications it would amount to the round of second/litigation on the same point. He submitted

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[redacted]
that the second round of litigation can not be permitted.

[redacted] The learned advocate Mr. Kureshi also submitted that the applicants ought to have made representations before approaching this Tribunal but now that they have filed these applications challenging the order of transfer, they cannot ask for the stay till the representations which they file are disposed of and again they cannot be permitted to file ~~the~~ fresh applications. Mr. Shah submitted that even after these applications are filed the applicants can make representation. Mr. Kureshi submitted that in that case the stay can not be given till the representations are disposed of and again they cannot be permitted to have second round of litigation after the decision of the competent authority. [redacted] Hearing the learned advocates, in my opinion, it would be ^{just and} proper to dispose of the applications on merits. The impugned order of transfer No. 103 dated 5th February, 1992 with regards to these two applicants is [redacted] made on the ground that they have become surplus consequent to reduction in workload at the Farm and that the said transfer orders have been issued in public interest. These orders are signed by Respondent No.3 and he has passed this order in pursuance to the order of

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transfers passed by one Shri V.P.Singh, the officiating Deputy Director of Military Farm, Headquarters, Southern Command. The order regarding the applicant of O.A. 48/92 and one Purushottamlal the order is dated 25th January, 1992 while the order regarding the applicant of O.A. 49/92 is passed by the same officiating Deputy Director on 27th January, 1992. The applicant of O.A.48/92 is a Farm Hand since 8 to 10 years to distribute milk in Military area while the applicant in O.A. 48/92 is working as a peon since 8 to 10 years. The applicants in the respective applications have challenged the order of transfer on the ground that the said order is a malafide action so far respondent No.3 is concerned. In affidavit in rejoinder also, the applicant of O.A. 48/92 has stated that his contention regarding malafide exercise of powers is particularly against the respondent No.3. The case of the applicants is that the transfer order on the ground of surplus is misconceived. Mr. K.K.Shah, learned advocate for the applicant submitted that the applicant and others had made the complaint against the respondent No.3, the copy of which is produced along with rejoinder at Annexure A-7 dated 5th March, 1990. He submitted that immediately on receipt of the said complaint, an order of transfer

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of the applicant of O.A. 48/92 to Bangalore was issued on 19th March, 1990, but the applicant had approached this Tribunal for challenging the said transfer and an interim stay was obtained and ultimately the order of transfer was cancelled. He submitted that, thereafter, the present order is passed against the applicants which is a colourable exercise of power. He submitted that adulteration of milk was going on in the Military Farm at Ahmedabad and there were serious allegations made against Respondent No.3 about his malpractice as per the complaint Annexure A-7 and instead of making fulfilled enquiry against Respondent No.3, the order of applicants are victimised by / transfer. The learned advocate for the respondents Mr. Kureshi submitted that the transfer of the applicants is made on account of reduction of work and they have become surplus and they have been transferred in accordance with seniority ^{list.} He submitted that once the applicant of O.A. 48/92 challenged the order of transfer but that was for other reason, it was not on the ground that he was a surplus and not on the ground that he was a junior ^{most.} He submitted that the present order of transfer cannot ^{be} / considered a malafide one. He submitted that the respondents had cancelled the order of transfer ^{of} / the applicant of O.A. 48/92 after the interim stay was granted

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present
by the Tribunal but that does not mean that the/
transfer order is malafide against the said
applicant. He submitted that the complaint or the
application dated 5th March, 1990 on which the
applicants rely was baseless. He submitted that
these
thereafter, two applicants also submitted joint
application dated 25th January, 1990 by putting
allegations against the Respondent No.3. He
submitted that the respondent No.2 had asked them
to submit the proof of the allegations levelled
against the respondents but they could not prove
the allegations against respondent No.3 and
thereafter, the Deputy Director of Military Farm
Shri Changappa served the charge sheet against
misconduct and
the applicants for their/unbecoming of a Government
servant, the copy of the same is filed by the
applicant at Annexure A/2. The said charge sheets
were dated 24th June 1991. The applicant had
given reply produced at Annexure A-3 and ultimately
the said Deputy Director Shri K.C. Chengappa passed
an order dated 31st October, 1991, after considering
and
the defence of the applicants/awarded punishment
of stoppage of two increments without cumulative
fact. He submitted that the order of transfers
have been passed by Mr. V.P. Singh who was at the
relevant point of time, the officiating Deputy
passed
Director of Military Farm and not/by Mr. Chengappa.

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10-A. He submitted that Shri K.C. Chengappa had initiated enquiry against the applicants on the ground that they had made false allegations on the administration and the punishment was awarded to them. He submitted that the orders passed by Mr. V.P.Singh of transfer of the applicants had been executed by the respondent No.3. The original orders of transfer are not passed by Respondent No.3 and therefore it cannot be said that the orders passed ^{are malefide} ~~are illegal~~. He submitted that the arguments of the applicants that as they had filed the complaint against the respondent No.3, he wanted to put the applicants out of Ahmedabad and ultimately he influenced Mr. V.P. Singh to get to transfer the applicants cannot be sustained. He submitted that respondent No.3 had no contact with respondent No.2 nor has he worked with respondent No.2, Mr. V.P.Singh nor Mr. V.P. Singh was influenced by respondent No.3. He submitted that the correspondence of Respondent No. 3 to respondent No. 2's office was with officer different than one who passed the impugned order of transfer as respondent No.2. The respondent No.2 Mr. V.P.Singh has filed reply contending that in the month of January i.e. from 23rd January to 28th January he was officiated as a Deputy Director of Military Farm, Southern Command and the impugned

order of transfers dated 25th January, 1992 and 27th January, 1992 were passed by him and signed by him. He has stated that due to reduction in work at Ahmedabad Military Farm, the surplus staff was required to be accommodated elsewhere and he has, therefore, passed this orders due to administrative exigency and as the applicant has become surplus. He has denied that the said orders are malafide one. He has denied that he has passed those orders at the instance of the respondent No.3 or because the applicants had made certain allegations of malpractice against respondent No.3. I agree with the submission made by the learned advocate for the respondents that the applicants have failed to prove that the order of transfer dated 25th January 1992 and 27th January, 1992 have been passed by Mr. V.P. Singh at the instance of respondent No.3 or that it was due to the complaint made against respondent No.3 vide Annexure A/7. I do not agree with the submission of the learned advocate for the applicants that the impugned order of transfer is colourable exercise of powers by respondent No.3 after the previous order of transfer of applicant of O.A. 48/92 was cancelled by respondents after obtaining interim stay in this Tribunal in O.A. 45/90. The learned advocate Mr.K.K. Shah

for the applicants submitted that if in the year 1990, order of transfer was suo moto cancelled by the respondents which was the ground now to make transfer again. Mr. Kureshi, learned advocate for the respondents submitted that the present order of transfer is on the ground that the applicants have become surplus due to reduction in work and it is in public interest that the same is made observing the seniority. The learned present advocate for the applicants submitted that the / transfer order **against** the applicant of O.A.48/91 was a colourable exercise of power by respondents and in support of his submission he relied on the decision in E.Kunjhiraman Nair V/s. The Superintendent of Post Offices Cannanore Division & Ors. reported in 1984(1) All India Service Journal p.157. It was a case of termination of service. The High Court of Kerala held that the termination is a punitive measure, the termination without resorting to the provisions of Article 311 is illegal. The main challenge to the order of termination in that case was that it was not in accordance with rules 6 of Extra Departmental Agents (Conduct and Service) Rules 1964. This decision does not help the applicants because this is not a case of termination at all.

11. Mr. K.K. Shah, learned advocate for the

applicants submitted that the respondent No.3 in Annexure A-4 dated 30th August, 1991 produced along with his reply to rejoinder has in a reply to the respondent No.2 to the letter dated 10th August, 1991 sent the parawise comments and ^{has} the respondent No.3 mentioned in it that the applicants were in the habit to write the anonymous applications to the Station authorities against the Departmental authorities and they tried to defame the Farm Administration and that the applicants were trying to instigate the other staff against the Administration for their personal benefits and that the applicants did not want to work in the interest of the Department and were always indulging in the anti-administration activities. He submitted that the transfer orders which have been passed by Mr. V.P. Singh, Respondent No.2, shows the reference to the Respondent No.3's letter dated 16th January, 1992 and therefore, according to him, the respondent No.2 was influenced by Respondent No.3. This submission cannot be accepted because the reference was with regard to the letter in which the suggestion was that there was a reduction in workload at the Farm due to procurement of processed milk from co-operative society milk schemes and therefore the respondent No.2 revised the strength

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surplus
and hence the / of Group D staff were transferred.

12. The learned advocate Mr. Kureshi for the respondents submitted that the applicants' orders of appointment produced by the respondents show that their services are liable to be transferred to anywhere in India. He submitted that transfer is only an incident of service and not a penalty.

However, learned advocate Mr. K.K. Shah submitted that the case of surplus staff has been made out illegally and the respondents No. 3 wanted these two applicants to go out of Ahmedabad. He submitted that the respondent No.2 did nothing after knowing the complaint against respondent No.3. However, as observed above, the respondent No.2 had started enquiry against the applicants for making the false allegations against the administration and against respondent No.3 and ultimately the applicants were punished against which the appeal is pending, but that can hardly be considered to hold that the order of transfer passed by Shri V.P. Singh was a malafide one nor could it be said that he was influenced by respondent No.3. Mr. Shah further submitted that so far the applicant in O.A. 49/92 is concerned, his was not a surplus post shown by respondent No.3 in his Confidential reply because there was work of Farm at least for Hand/two to three hours as per the say of the

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respondents. He submitted that the two Farm Hand
Purushottam
namely the applicant of O.A.48/92 and one another/
were transferred, but no data was given by
respondents about the reduction of work. It is not
Purushottam
in dispute that the other Farm Hand/who was
transferred under the order dated 25th January, 1992
has accepted the transfer. The learned advocate for
the respondents submitted that Government has a
paramount right to create or abolish the post
having regard to the exigency of service and due to
reduction in work, the applicants were found surplus.
He submitted that the applicants cannot challenge
the right of the respondents for abolition of the
post, if the applicants have been rendered surplus.
He relied on the decision given in O.A.1109 & 1111
of 1991 by the C.A.T. Madras Bench decided on 29th
December, 1991. The applicants in that case, who
were the Farm Hand in Military Farm Madras, had
challenged their transfer on the ground that the
respondents had violated the guidelines and orders.
The transfer order in that case/^{was} issued on the basis
that the applicant had been rendered surplus and no
reasons/^{were} given for the transfer of the applicants
outside Madras. The respondents contention was that
since the workload was reduced, seven posts were
rendered surplus and it was also contended that the
right
Government had paramount/to create or abolish a

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post having regard to the exigency of service.

The Tribunal after considering the ratio laid down in the decision of Mrs. Shilpi Boss case(supra) dismissed the applications. Therefore, in the instant case also, when the work was reduced and if the applicants were found surplus, the applicants cannot make any grievance about their transfer.

13. The respondents No.3, has contended in the reply that it is due to reduction in workload at the Farm due to procurement of processed milk from the Government Milk Scheme (Abad Dairy, Ahmedabad) and the Government policy to reduce the staff as economic measures, the action was taken transferring the applicants along with the others as they were found surplus. Earlier the raw milk was being purchased by the local suppliers, then the same was being separated/toned and pasteurised in the Farm and then distributed the same to the Defence Unit and to the paying customers but since the job of tonning of milk and its pasturisation was not all being done at this Farm, rendered some staff surplus, which was reported to the higher authorities, and therefore, this orders were passed. It is contended in the reply that the applicants were junior-most and as the establishment had been reduced due to reduction in workload, the two post of Farm Hand had been

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rendered surplus, the applicant of O.A. 48/92 and one Purushottam were juniors at the Farm Hand as per seniority list and therefore, they were transferred. In my opinion, due to reduction in work when the applicant has been found surplus, it cannot be said that the transfer order is or illegal. either malafide/ It is not pointed out that there any is breach of statutory mandatory rule.

14. The learned advocate for the applicants submitted that the respondents have produced along with reply to rejoinder Annexure A-9 at page 53 showing the name of the applicant of O.A.48/92 and one Purushottam Lal in Group D category, Farm Hand at Sr.No. 5 & 6 and the name of applicant of O.A. 49/92 as a Peon and then has shown the name of one Avtesh Pratap Singh as Farm Hand (Boiler Mazdoor). But he submitted that the applicant ~~alone~~ ^{his} with additional rejoinder, has produced documents dated 24th May, 1979 of which is a charter/ duties of Military Farm employees in which in para 3, the categories of employees of military farms show (a) UDCs/LDCs, (b) Daftry, (c) Peon/Messenger (d) Farm Hand and at page 3 of that document it is shown that Farm Hand had to do several duties including the duty of Boiler Mazdoor. He submitted that Avtesh is junior to the applicant of O.A.48/92

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and he is Farm Hand and not Boiler Attendant as per circular dated 26th February and the copy of DDME HQ Southern Command dated 2-6-88 also shows qualification of Farm Hand, which document is produced by /
The desirable qualification is primary pass and the name of Avdesh Pratap Singh^{is} shown as Group-D Farm Hand and not shown in Group-C post. He also referred to Annexure A-8 annexed with reply to rejoinder and A-14. He submitted that respondent No.3 had to perform three duties (1) seniority list of Group C & D staff (2) Categories to be shown and (3) the combined seniority list. He submitted that there is no combined seniority list, the list is showing only the unit position. The learned advocate for the respondents submitted that the respondent No.3 has specifically contended in the reply that Avdesh Pratap Singh is Farm Hand (Boiler Mazdoor) and not a single Farm Hand like the applicant and as per his appointment letter his seniority does not count with the simple Farm hands since he has been recruited for special job. He submitted that the Farm Hand Boiler Mazdoor is possessing Boiler Attendant Certificate issued under the Gujarat Government Boiler Attendant Rules of 1966, that he has been recruited as Farm Hand Boiler Mazdoor. He submitted that the seniority list produced by the respondents shows the name of applicant of O.A.48/92 at Sr.No. 5 and one Purshottam ~~Leela~~ Leela Ram at

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Sr.No.6 and ~~these~~ ^{had} were junior-most Farm Hand and Purushottam Leelaram accepted the transfer. He submitted that the name of Avtesh Pratap Singh is shown in the list of category of Farm Hand (Boiler Mazdoor) and therefore, ~~he is continued and~~

~~he is continued and~~ submitted that the junior-most persons were transferred as they were found surplus. The learned advocate Mr. K.K. Shah for the applicants submitted that the applicant of O.A.48/92 is transferred because the respondent No.3 had already made parawise remarks against the applicant on 30th August, 1991 vide Annexure A-4 that the applicant was in habit of writing the anonymous application to the Station authorities against the departmental authorities and he did not work in the interest of department and was indulging in the anti-administration activities and tried to instigate the other staff against the administration for their personal bebefits. He submitted that this was the main reason why the applicant is mictimised and this is not a simple transfer. He relied on the decision in K.K. Jindal V/s. General Manager, Northern Railway & Ors. ATR 1986 Vol.I p.304. This is the decision of the C.A.T. Principal Bench in which it is held that where from the evidence it is clear that the impugned transfer is

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for reasons other than merely administrative, meaning thereby, that it is only ostensible reason and the transfer is based on suspicion as regards conduct of employees, it is a colourable exercise of power. In the instant case as observed above, the respondent No.2 had chargesheeted the applicants and punished them against which the appeal is pending which is a different proceeding. The present transfer is not based on suspicion on the conduct of the applicants. I do not agree with the submission of learned advocate Mr. K.K.Shah that this is not a simple transfer on the ground of reduction in work. I also do not agree with him that the transfer is the result of the malafide action on the part of the respondent No. 2. Mr. Shah also submitted that the wife of the applicant of O.A. 48/92 is working in ONGC at Ahmedabad and if the applicant is transferred he will have to maintain his family two establishment and would be ruined and the transferring authority has not considered this aspect and there is violation of Article 21 of the Constitution. He submitted that the applicant has many years of service to perform and therefore, he cannot at present exercise even option of voluntary retirement. He relied on the decision in B. Vardha Rao V/s. State of Karnataka, AIR 1986 SC 1955 in which it is held that the policy of

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transfer should be reasonable and fair and should apply to everybody equally. Petition filed in that case was dismissed but it was held that so far Class III & Class IV employees are concerned, the Government will keep consideration in view while making an order of transfer that frequent and unscheduled and unreasonable transfers can uproot a family. In the instant case, it is not frequent transfer, more over, the transfer is made on the ground of reduction in the work and the applicants have become surplus and therefore the above decision does not help the applicants. The respondents have contended in the reply that the establishment has been reduced due to reduction in workload that the ^{two} posts of Farm Hand were rendered surplus and i.e., why the applicant of O.A. 48/92 and one Purushottam, who were junior most Farm Hand as per seniority list were transferred.

More over it is not in dispute that the applicants belong to all India service and the hardship resulting from the husband and wife being posted at different places may be unavoidable in a case like present one. I do not agree with the submission of learned advocate Mr. Shah that such an action is violative of Article 21 of the Constitution of India. Moreover merely because the

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applicant's wife is serving at Ahmedabad in ONGC, cannot be accepted that it /the transfer of the applicant cannot

be made as both the spouses will have to remain at different station. The learned advocate Mr.

Shah also relied on the decision in State of Madhya Pradesh V/s. Shankar Lal & Ors. (1980) 1 SCC p.702

in which the powers of the State Government under section 94(7) of the M.P. Municipalities Act, 1961

were challenged. It was held that the State

Government had the power to transfer the respondents

but it was not clear why the power was exercised

in case of the respondents and also as the

learned counsel for the delinquent in that case

had submitted that the State was more anxious for

the correct interpretation of the law then to

enforce the order of transfer against respondents,

an appeal filed by the State was dismissed. This

decision is not relevant to the facts of this case.

Learned advocate for the applicants also relied on

the decision in S. Pratap Singh V/s. State of Punjab,

AIR 1964 SC 72 and he has drawn my attention to

para 81 & 82 of the judgment. The appellant in that

case had challenged the impugned orders passed

against him placing him under suspension, pending

an enquiry and recalling him from the leave

previously granted and starting an enquiry against

him as illegal on the ground that such action on the

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part of Government was contrary to and not permitted by the relevant Service Rules applicable to him, and the other ground was that the said orders were passed malafide, by or at the instance of the Chief Minister, Punjab, who was personally hostile to him. In the instant case, as observed above, the order is passed by V.P. Singh, respondent No.2, at the relevant time/^{and} respondent No.3 merely executed the said order. ^{I am} also not satisfied that the order of transfer against the applicant, is the result of alleged malafides on the part of Respondent No.3. The learned advocate for the applicants also read the paragraphs on malafides at page 562 from the Book of Principles of Administrative Law, 1986 of M.P.Jain & S.N.Jain, ^{wherein} / it is mentioned that Mala fides or bad faith means dishonest intention or corrupt motive, it means that the statutory power is exercised for purposes foreign to those for which it is in law intended. Malafides is equated with any ultra vires exercise of administrative power. In the instant case, the applicants have failed to establish that the transfer orders are passed by dishonest intention or corrupt motive by respondent No.2.

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15. The learned advocate Mr. K.K. Shah for the applicants submitted that the respondent No.3 has not filed affidavit. He submitted that if the

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malafide is alleged against respondent No.3 then he has to file affidavit to contravert the same and more reply is not sufficient. Respondent No. 3 has filed reply on verification. The rule 12 of Central Administrative Tribunal (Procedure) Rules 1987 shows that the reply has to be sent and verified as a written statement by the respondents or any other person duly authorised by him in writing in the same manner as provided for in Order VI, Rule 15 of the Code of Civil Procedure. The respondent No.3 has in this case filed reply in detail controverting all the averments made against him and he has also filed further reply to the rejoinder on verification. There is no statutory rule that the reply ought to have been filed on affidavit. I, therefore, reject the submission of the learned advocate for the applicant that the reply of Respondent No. 3 not being in the form of affidavit should be rejected.

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Learned
/advocate for the applicant also relied on the decision in K.I. Shephard & Ors. V/s. Union of India & Ors., (1987) 4 SCC 431 and he drew my attention to para 15 & 16 of the decision in which it is mentioned that fairplay is a part of the public policy and is a guarantee for justice to citizens. In that case many employees of three different Banks were excluded from the employment

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and the services were not taken over by respective transferee bank when amalgamation of the said three bank was made. It was held that these employees had been thrown out of employment and thereafter given opportunity of representation, they must be facing serious difficulties. It was held that there was no justification to throw them out of employment and then given opportunity of representation. Learned advocate Mr. Kureshi for the respondents submitted that there is no question of termination of service of applicants and he submitted that therefore, the last come first go according to seniority list also can only prevail when there is a question of termination. In the instant case of transfer, out of 6 members of staff at Ahmedabad, two junior-most persons in the seniority list of local farm have to go out and the question of combined seniority list of this cadre all over India is not to be examined for transfer. The learned advocate for the applicants submitted that even in the case of transfer on the ground of surplus the respondents ought to have examined the combined seniority list of the cadre all over India and ought to have transferred a person who is junior-most. There is no substance in this contention. More over, the decision cited by the learned advocate for the

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applicants does not apply because this is not a case of termination and it was not necessary to hear them/and if the applicants were not heard before their transfer by the Respondent No.2 before making their transfer, it cannot be said that there was violation of principle of natural justice. The learned advocate for the applicants also relied on the decision in Government Body St. Anthony's College, Shillong and Ors. V/s. Rev. Fr. Paul Petta of Shillong East Khasi Hills, reported in 1988 (Supp'd.) SCC p.676, my attention was drawn to page 679 para 5 of the judgment. The order of transfer was challenged in that case by the respondents. The observation in para-5 of the judgment is that the purported order of transfer tantamounts to removal of the respondent from the post of Principal and the said order being issued without recording any reason and without giving any opportunity to show cause to him is arbitrary, illegal and malafide and it was violative of principles of natural justice and therefore, it was quashed. The learned advocate for the respondents submitted that here the transfer order shows why the applicants are transferred. More over, in the case relied on by the learned advocate for the applicants, a/^{man} was transferred from the post of Principal to the post of teacher in a college

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outside the State in which the governing Body had when such a duly appointed Principal no control and / was entitled to work till the age of superannuation in view of the relevant Govt. instructions. It was held that thus the transfer order almost amounted to removal from the post of Principal and against Government instructions. The above decision does not apply to the facts of the present case.

16. Learned advocate for the respondents submitted that the respondent No.2 along with his reply has produced the letter dated 26th February, 1988 regarding recruitment of staff in Group C & D post at Military Farms which shows that the Boilerman (Boiler Attendant) should have qualification, be primary pass and must/in possession of Boiler Operator Certificate/ Boiler Attendant Licence and experience of three years in maintainance and running of Boiler upto 20 nominal horse powers and fitness of steam pipe and pipe fitting while for the Farm Hand the desirable qualification is primary pass.

According to learned advocate for the respondents, Mr. Avdhesh Pratap Singh is continued at Ahmedabad as he meets the qualification as per this letter while the applicant of O.A. 48/92 has no such qualification. He submitted that the respondent No.3 in his reply to rejoinder has catagorically contended that earlier the the raw buff milk

was purchased from the local supplier then the same was being separated and toned and pasturised at this Farm and now the readymade pasturised milk is being purchased from the Government Milk Scheme (Abad Dairy, Ahmedabad) as per the Government of India's orders hence the workload is reduced and since no separation and pasturisation is being done at this Farm, it has resulted in surplus staff. He submitted that there is no malafide intention on the part of either Respondent No.2 or Respondent No.3 in transferring surplus staff. He submitted that as per the Ministry of Defence letter dated 1st August, 1989, the milk is being purchased from Government Milk Scheme with effect from April, 1990. The seniority list of Group D staff was prepared during 1981 as per DDME HQ Southern Command Kirkee/Pune-3 letter dated 31st January, 1990. The fresh seniority roll of Group D staff was called for by respondent No.2 which was submitted by respondent No.3 under office letter dated 20th February, 1990. So far Avdesh Pratap Singh is concerned, he has obtained certificate under Gujarat Boiler Attendant Rules of 1966, who can hold the charge of boiler and therefore the Boiler Mazdoor Avdesh Pratap Singh having such certificate has been appointed accordingly and he has passed departmental trade test of

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Boilerman and on this certificate, he has been continued and PE of the Farm Hand (Boiler Mazdoor) has been sanctioned by respondent No.2 accordingly. There were six simple farm hands when the posting orders were issued by Respondent No.2 and the posts for four farm hands were sanctioned and the transfer orders of junior-most farm hands have been issued and the applicant is at Sr.No.5 on the seniority roll and the farm hand Purshottam Lal at Sr.No.6 who has already been relieved from 12th February, 1992. The respondent No.3 has denied that every man can do the job of Boiler Mazdoor. At present there are five farm hands including the applicant and their duties have also been shown in para 10 of the reply of respondent No.3, two bottom junior persons were relieved out of 6 because four posts only were sanctioned, one post of peon, two post of farm hand were abolished. Learned advocate for the respondents submitted that Annexure A-8 produced by the respondents is revised Annual PE for 91-92 (p.50) dated 11-1-1992 sent by Mr.V.P.Singh to Military Farm Ahmedabad which shows that out of 4 Farm Hand for daily duty only one post is sanctioned (item No.2) and two were surplus because the third one was not appointed and so far the post of peon is concerned, it was not sanctioned as per that letter (item No.6). At page 51 of Annexure A-8 item No.2 shows that the farm hand

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(boiler mazdoor) with licence as per the revised annual PE is continued and therefore the boiler mazdoor, Ahmedabad is not disturbed. The respondents have produced at Ann.A-10 the Gujarat Boiler Attendant Rules. The learned advocate for the respondents has drawn my attention to rule 3 regarding extent of qualification indicated for boiler attendant in respect of a boiler of any capacity worked by the military authority. He submitted that Avdesh Pratap Singh is a civilian staff otherwise proviso will apply. Ann. A-11 also shows that Avdesh Pratap Singh has passed the trade test also. The respondents have also produced the documents to show that Avdesh Pratap Singh has second class Boiler Attendant Certificate dated 16th December, 1980 which certificate authorised him to handle boiler of particular capacity and on that basis he is appointed on this post. The appointment order of Avdesh Pratap Singh on this post of Farm Hand (Boiler Mazdoor) is dated 13th February, 1987. He submitted that even if applicants have any grievance against the respondent No.3, order passed by Mr.V.P.Singh, respondent No.2 at the relevant point of time cannot be challenged on the grounds mentioned in their applications. He submitted that the reduction of staff is administrative function.

17. The learned advocate for the applicants submitted that the applicants are not surplus. He submitted that the last affidavit filed by the applicant of O.A.48/92 on 8.4.92 shows that the seniority list shown by respondent No.3 by separating the Farm Hand, Boiler Mazdoor, etc. is not in term of document Annexure A-14 dated 31st January, 1990. He submitted that as per documents annexure A-12 now only work done in the MFD is the distribution of milk purchased from the Abad Dairy, and therefore, he submitted that the requirement of Boiler Mazdoor is no more. Now or requirement this internal arrangement/as to whether there is any need for Boiler Mazdoor cannot be probed into. It cannot be said that Avdesh Pratap Singh is continued to victimise the applicant. The learned advocate for the applicants submitted that in para 3 of the last affidavit of the applicant, a letter No. D2 dated 30th March, 1992 is referred and he submitted that it is in possession of respondents and the respondent no.3 is going to purchase the milk locally instead of Abad Dairy and he has already entered in a contract for one truck which has already started operating, but due to operation of stay in this matter respondent No.3 has not started purchasing the milk from the local area. In my opinion, this

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averments in the last affidavit of the applicant would not go to show that the transfer order of the applicants is due to malafides.

18. The learned advocate for the applicants also relied on some decision on the topic of victimisation. He relied on the decision in *The Management of the Syndicate Bank Ltd., V/s. The Workmen*, AIR 1966 SC 1286. It is a decision of five Hon'ble Judges of the Supreme Court. It was held in this decision that the Banks were entitled to decide on a consideration of the necessities of banking business whether the transfer of an employee should be made to a particular branch and the management of the Bank is in the best position to judge how to distribute its employees between the different branches and therefore Industrial Tribunals should be very careful before they interfere with the orders made by the Banks in discharge of their managerial functions. It is held that if an order of transfer is made malafide or for some ulterior purpose like punishing an employee for his trade union activities, the Industrial Tribunal should interfere and set aside such an order of transfer. It is also held that the finding of malafide should be reached only if there is sufficient and proper evidence in support of the finding^{but it}/should not be reached capriciously or on flimsy grounds.

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The learned advocate for the applicants submitted that the decision given in Mrs. Shilpi Boss (supra) is of a three Hon'ble Judges of the Supreme Court which has not overruled the above decision. He submitted that at page 1284 of that decision the question of malafide is discussed. He submitted that the case of Bareli Electricity Supply Company Ltd. V/s. Sirajuddin, (1960) 1 LLJ 556(SC) is also referred. The learned advocate for the respondents submitted that para 6 of the ^{said} judgment on the contrary ^{helps} ^{He} the respondents ^{He} submitted that in the instant case the applicants have failed to ^{sufficient and} establish by ^{proper} evidence that there were malafides on the part of the respondent No.2 in passing the transfer orders against applicants and they ^{that} have also failed to establish ^{that} it was at the instance of respondent no.3 that such an action is taken as respondent no. 3 wanted to push the applicant. He submitted that the office at Ahmedabad found that these applicants were surplus due to reduction in the work and hence ultimately Mr.V.P. Singh has passed the order of transfer. He also submitted that the decision relied on by the learned advocate for the applicants has not laid down law contrary to decision in Mrs. Shilpi Boss case. He submitted that the allegations of malafide should be strictly proved. According to him, if the

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contents of both the applications are perused, the allegation of malafide is only against respondent No.3 which is also not established apart from the fact that no allegations of malafides are made against Mr. V.P.Singh who has passed the order.

19. The learned advocate for the applicants submitted that the applicants in rejoinder have disputed seniority list of respondents regarding bifurcation of Farm hand & Boiler/Mazdoor. The applicants have also produced certain photographs and ~~xxx~~ submitted that the respondent no.3 is indulging in malpractice. It is also submitted that the applicant with his rejoinder has produced Annexure A-9 dated 11th February, 1992 which is a tender and it is in stereo-type form which is proof that sufficient/such illegality can be continued. He submitted that the next page of it shows that the purchase of milk from private party was started. The learned advocate for the applicants also submitted that the letters of four paras of the transfer order dated 27th January, 1992 and 25th January, 1992 are different. In my opinion there is no substance in it. I rely on the reply which has been filed by the respondent No.2 Mr. V.P.Singh that this orders have been passed by him under his signatures. The allegations are two general against respondent

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No.2 and the documents produced by the applicants do not establish malafides. The learned advocate for the applicants submitted that after January 1992 after new quotation respondent No.3 did not inform respondent No.2 that there is no reduction. He submitted that the respondent No.3 has played mischief. He also drawn my attention to Annexures A-3, A-4, A-5, A-6 & A-8. He submitted that Mr. V.P. Singh has no authority to pass such transfer order. No such provision or rule shows that he could not pass such order. He also submitted that why in 1991-92 reduction of post from 9 to 5 was made. Learned advocate for the respondents relying on the decision of the Madras Bench of the C.A.T., referred to earlier, submitted that the reduction of staff is an administrative function and the Government has paramount right to create or abolish the post having regard to the exigency of service. He submitted that the documentary evidence produced by the respondents show that the transfer orders were not made because of malafide as alleged by the applicants ^{but} because there was reduction in work and as the post sanctioned were reduced. He denied that Mr. V.P. Singh, Respondent No. 2 reduced the strength under pressure of respondent No.3. The learned advocate for the applicants also

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submitted that post of MT Driver is shown in a document dated 4th January, 1992 and inspite of revision by respondent No.3, the respondents No.2 continued two drivers then why Farm Hand was reduced ? This conduct of respondent No.2, on the contrary shows that the respondent No.2 takes an independent decision without being influenced by Respondent No.3. He also submitted that the Rules shown by the respondents are not full Rules. He submitted that ^{~ h} Avdesh Pratap Singh is junior to the applicant, he was casual employee in 1981 while the applicant is working since 1980. He submitted that the Cooling plant had been lying ^{~ idle} as per Audit Remarks, still the respondents say that the boiler is working. He submitted that though atpresent two drivers are working and only one jeep is there why the post of Farm Hand is reduced. The learned advocate for the applicants also pointed out some discrepancy in nominal Roll of Group C & Group D and submitted that name of Avdesh Shown in Group D and not in Group C. He submitted that the respondent no.2, Mr. V.P. Singh was not competent to transfer the applicants. In support of his submission, he relied on the decision in General Officer Commanding-in-Chief and Anr. V/s. Dr. Subhash Chandra Yadav & Anr. (1988) 2 SCC 351 in which it is held that inspite of Section 280(2)(c)

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of the Cantonments Act, even after it is amended in 1983, the Central Government will not be entitled to frame rules for transfer of an employee from one Cantonment Board to another within the State. Thus the decision does not apply to the facts of the case at all. His submission that the junior person in the seniority list at Ahmedabad Farm cannot be transferred but a person in the Group D staff in the combined seniority list of all India should be transferred, cannot be upheld because there is no such rule shown.

20. The learned advocate for the applicants also relied on the decision in E.P.Royappa V/s. State of Tamil Nadu and Anrs, (1974) 4 SCC 3. The question involved in it was when does a new post not in the same cadre involve same status and responsibility? Scope of Article 14 & 16 of the Constitution is discussed. In the instant case, the applicants are transferred in the respective Group D and their service conditions are not affected. Moreover the applicants have also not established malafides against Respondent No.2 that onus has not been discharged by applicants, hence this decision does not help the applicants. The other decision relied on is Charanjit Lal V/s. Union of India & Ors. (1987) 3 ATC 311 which shows that Government has right to transfer officers who are appointed to

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transferable posts in exigencies of public service or in public interest, if however, the transfer smacks punitive nature and if it is arbitrary or malafide, then the court can go into the foundations of transfer order and can set it aside. Now as observed earlier, the decision in Mrs. Shilpi Boss case of the Hon'ble Supreme Court is a guideline to decide the case about transfer. The other decision relied on are V. Bhaskaran V/s. Deputy Collector (P&E) Office of the Collector of Central Excise, Ernakulam, Cochin and Ors. (1987) 4 ATC 473, H.S. Ajamani V/s. State of M.P. & Ors., (1989) 9 ATC 122, and Shri Kamlesh Trivedi V/s. Indian Council of Agricultural Research & Anrs. ATR 1988(2) CAT 116. These are the decisions on the question of transfer but as observed above the latest decision from the Hon'ble Supreme Court in Mrs. Shilpi Boss case (supra) has to be followed.

21. So far the applicant of O.A. 49/92 is concerned, he is working as peon at the Military Farm at Ahmedabad and the order of Mr. V.P. Singh, Respondent No. 2 dated 27th January, 1992 shows that in continuation to the headquarter letter of even No. dated 25th January, 1992 the posting of this applicant was ordered to Pimpri and the above modification was made in the public interest. The seniority list of Group D staff in the category

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of peon shows only the name of this applicant and the respondents have contended in the reply that the transfer order of this applicant has been issued as there was reduction in the work. This applicant being a peon, he cannot be accommodated as a Farm Hand (Boiler Mazdoor) as submitted by the learned advocate for the respondents. The revised annual PE for 1991-92, Ann. A-8 dated 11.1.1992 shows that one post of the peon which was the only post existing is not sanctioned and hence it cannot be said that the transfer order is a malafide one. This applicant, after the arguments were completed and after the matter was kept for judgment, has produced his letter dated 27-5-92 with the order dated 29th April, 1992 intimating him that the DIMF HQ Southern Command, Kirkee had intimated the office that he has been selected by the DPC from peon to Daftry and Headquarter Southern Command, Kirkee/Pune had asked his willingness certificate to move out of the Farm for promotion. He has made endorsement on it that he was not willing. According to this applicant, as per his letter dated 27-5-92, the respondent No.3 gave this letter on 2nd May, 1992 and if this letter was given to him before 1st May, 1992 before the arguments were completed, he could have produced this letter. He has mentioned in the letter addressed to this Tribunal that he

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would be put to difficulty if he was to go out of Ahmedabad.

22. I have heard the learned advocates at length and have considered all the submissions and decisions cited by them and I have gone through the pleadings and all documents on record. In the instant case, the applicants have failed to establish that transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. The transfer orders are made in public interest as mentioned in the respective orders as the workload had reduced.

23. The respondents, however may reconsider the case of transfer of applicant of O.A. 49/92 who is a peon. No doubt he has been selected by the D.P.C. from peon to Daftry and he was asked to show his willingness if he was ready to move out of the Farm on promotion as per letter dated 29th April, 1992 and the applicant has shown his unwillingness. Though I hold that the transfer of this applicant is also legal and proper but having regard to the fact that he is a peon, the respondents may sympathetically reconsider his case if they deem fit but that will not give any cause of action to the applicant of O.A. 49/92 to reagitate the question of his transfer before this Tribunal. This is only a suggestion to

the respondents and not a direction.

24. The result is that both the application shall have to be dismissed.

ORDER

O.A.No. 48/91 and O.A.No. 49/91 are dismissed with no orders as to costs. The applications are disposed of. Interim relief vacatted in both the case.



(R.C.Bhatt)
Member(J)

CA/48/92 and OA/49/92

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Date	Office Report	ORDER
25.6.92		<p>The interim ^{relief} though vacated as O.A./48/92 and O.A./49/92 are dismissed today, However, learned advocate Mr. Shah for the applicant, submits that as the applicant wants to file appeal before the Hon'ble Supreme Court, The interim relief be continued for eight weeks. Learned advocate Mr. Kureshi for the respondents submit that the matters in question ^{are} of transfer matter and hence no time exceeding four weeks, no time should be given and the judgment should operate immediately. Mr. Shah learned advocate for the applicant submitted that due to summer vacation in the Hon'ble Supreme Court, at present and due to other difficulty of the applicant the judgment require to be stay for eight weeks.</p> <p>After hearing of ^{in the} learned advocates and interest of justice and the fact that there is summer vacation at present in the Hon'ble Supreme Court judgment of these two cases pronounced is ^{today} stay for six weeks.</p> <p style="text-align: right;">L Dhanu (R.C. Bhatt) Member (J)</p> <p style="text-align: center;">*K</p>