

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 267 of 2008

Tuesday, this the 16th day of June, 2009

CORAM:

Hon'ble Mr. George Paracken, Judicial Member

C.J. Mathew, S/o. Joseph Mathew,
aged 53 years, Inspector of Income Tax,
Central Circle, Kollam, residing permanently
at Cheruvathoor, Amman Nagar 55, Pattathanam P.O.,
Kollam.

Applicant

(By Advocate – Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary to the Government of India, Ministry of Finance, New Delhi-1.
2. Central Board of Direct Taxes, reopresented by the Chairman, CBDT, New Delhi.
3. Chief Commissioner of Income Tax, Kerala Circle, 15 Press Road, Kochi.
4. Commissioner of Income Tax, Trivandrum Region, Trivandrum.
5. Additional Commissioner of Income Tax, Kollam Range.

Respondents

(By Advocate – Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 21.4.2009, the Tribunal on 16.06.2009 delivered the following:

O R D E R

Challenge in this OA is against Annexure A-1 order No. 12/Estt./6/CC-CHN/2008-9 dated 7.5.2008 and Annexure A-2 order No. 12/Estt./6B/CC-CHN/08-09 dated 26.5.2008. By the Annexure A-1 order, the 3rd respondent has made intra-commissionerate transfer and posting of 54 officers working in different offices under the Chief Commissioner of

Income Tax, Kochi. Applicant was one of them. He has been transferred from the office of the Assistant Commissioner of Income Tax, Central Circle, Kollam to Income Tax Office at Mattancheri. He has earlier challenged the aforesaid order before this Tribunal vide OA No. 239 of 2008 and it was disposed of vide Annexure A-4 order dated 13.5.2008 at the admission stage itself with a direction to him to make an appropriate representation to the third respondent and, on receipt of such representation, the said respondent to consider the same and to pass a speaking order. Till such time it was ordered to maintain status quo with regard to his transfer and posting. Annexure A2 is the speaking order issued to the applicant by the 3rd respondent rejecting his Annexure A5 representation dated 15.5.2008 requesting the said respondent to set aside Annexure A1 transfer order in his case.

2. In the Annexure A-5 representation, the applicant stated that while he was working as Office Superintendent (I) at Kollam he was promoted as Income Tax Inspector on 2.7.2001 and posted at Kollam itself. On 27.6.2004, he was transferred to Thiruvananthapuram on completion of two years of service at Kollam, as per the existing norms. He was transferred back and posted at Kollam again on 15.6.2006. Since then he has been working at Kollam. During that period, he was elected as the President of the Income Tax Employees Federation (ITEF for short), Kollam Branch and in the said capacity, he made representations and passed resolutions adversely commenting on the actions of the Commissioner of Income Tax, Thiruvananthapuram and Additional Commissioner of Income Tax, Kollam Range. The complaint against the Commisioner of Income Tax, Thiruvananthapuram was against the implementation of a software, namely, 'Swami's Software', which was not authorized by CBDT and it has disrupted the entire statistical system in Kollam Range. The Chief Commissioner of Income Tax intervened in the mater and the problem was amicably settled by removing the new software on the basis of an oral direction from him. As President of ITEF, according to him, he again intervened when the Commissioner of Income Tax, Thiruvananthapuram and Additional



Commissioner of Income Tax, Kollam in connivance with the Chief Commissioner of Income Tax, Thiruvananthapuram demanded to manipulate the disposal of returns during the month of March, 2008 by giving an enhanced figure of about 16000 as against the real figure and forced the staff at Kollam range to manipulate the progress report and CAP statement. The applicant alleged that impugned transfer was the first step on the part of his superior officers to wreck vengeance against him for his Union activities. He has also stated that he has some personal problems. His mother is aged and ailing, his wife is working in Syndicate Bank, Kundara which is a nearby place and he has to take care of his widowed sister and widowed niece. Therefore, a transfer at this stage will be quite inconvenient to him.

3. The applicant challenged the aforesaid Annexure A-1 transfer order in his case and the A-2 speaking order stating that they are against the Annexure A-3 transfer and posting policy guidelines according to which only the following officers can be considered for transfer:

- (a) Officers/officials who desire to have transfer on request basis,
- (b) All Group 'A' & 'B (Gazetted)' officers who will be completing 3 years of stay in a particular station as on 30.6.2008;
- (c) All Group 'B (Non-Gazetted), 'C' & 'D' officials who will be completing 5 years of stay in a particular station as on 30.6.2008.

The applicant has also specifically alleged in ground (H) of this OA that many others who have more service than him at Kollam are retained there while he is transferred out from there. For example, according to the applicant Shri C.J. Babu, Shri John M., and Shri Sudhakaran Pillai were working at Kollam from dates much before his date of posting there and are not transferred. Again, Shri George Thomas (Sl. No. 12) and Smt. Saramma Abraham (Sl. No. 11) in the Annexure A-1 transfer order itself have been retained at Kollam and they also have more service than the applicant at Kollam. They have been retained apparently on the ground of posting of spouses at the same station but the applicant has been singled out by giving an adverse posting for no rhyme or reason, in violation of Annexure A3

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transfer policy. The other ground taken by the applicant is that the order of transfer is a punitive action and stated that in Annexure A-2 order itself it has been admitted by the respondents that the applicant was transferred "to realize his mistake and to correct himself". Further, he submitted that the findings against him by the placement committee leading to the Annexure A1 transfer order are made with no opportunity granted to him to explain and the actions he took as the representative of a recognized association of the employees formed the basis of the findings.

4. The learned counsel for the applicant Shri Hari Raj has also relied upon the following judgments in support of his submissions:

- a) Umesh Chand Tiwari Vs. The State of UP & Ors., 1988 (1) SLR 409
- b) P. Pushpakaran Vs. The Chairman, Coir Board, Cochin & Anr., 1979 (1) SLR 309
- c) Mytheen Vs. State of Kerala & Ors., 1987 (1) KLT 21
- d) S.V. Singh Vs. Union of India & Ors., 1988 (2) SLR 545
- e) Mohanan Nair Vs. State of Kerala, 1993 (2) KLT 930

5. In Umesh Chand Tiwari's case (supra), the apex court has held as under:

"A Government, undoubtedly, is the best judge as how best the services of its employees can be utilised and at what place but the employee too has a right to seek protection that he was being victimised by resorting to transfer for oblique motive or the transfer order was unjust or unfair. Its intensity is more severe where the order is passed due to interference by higher authorities who themselves are not entitled to transfer but exercise their power unreasonably by curtailing the direction of those who are lower in hierarchy. Due to action of the Secretary the petitioner has been put at par with the other Assistant engineer who was found responsible for carelessness in construction of Karhal Nala and who for this negligence was transferred. It was certainly unfair. The direction was unjust as in absence of any disciplinary proceedings contemplated against petitioner the very foundation of direction issued by the Secretary falls to pieces. Since the direction issued by Secretary is found to be bad the consequential order passed on it automatically falls."

5.1 In P. Pushpakaran's case (supra), the Hon'ble Kerala High Court has held as under:

"24. The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer."

5.2 In Mytheen's case (supra), the Hon'ble Kerala High Court has held as under:

"It is true that the Government is the repository of all executive power, and that may perhaps take in the power to order transfer of subordinates. But when once the government canalised the power, designated the authorities and invested specified powers in such designated authorities, such executive power is capable of exercise only by such designated authorities and subject to specified pre-conditions. The availability of power does not mean that it can be arbitrarily exercised irrespective of limitations. If once the State imposes limitations on its power based on ascertainable standards and prescribes conditions under which each authority shall exercise the power, those are the best guarantees against arbitrariness in State action. The exercise of power can be measured with the yardstick provided by the executive itself. That is the basic requirement of the rule of law, and guarantee against exercise of power based on individual caprices and personal fancies."

5.3 In S.V. Singh's case (supra), the Hon'ble Calcutta High Court has held as under:

"While it is true that transfer is an incidence of the service of the petitioner but that does not mean and imply that the same be applied without any just cause or reason. There must be cogent administrative reasons for such an order of transfer, in the absence of which the Law Courts will strike down the same. It is a powerful weapon in the hands of the administration, but that does not clothe the administration to use it at random and to suit the convenience of same. It must be fair, reasonable and as for administrative reasons. As noted above, it ought not to be used as an alternative to disciplinary proceedings or the order of suspension. If the facts warrant issuance of an order of suspension and initiation of a disciplinary proceeding, the authority ought not to use the strong weapon in its hand by ordering a transfer in lieu thereof and if the Law Courts permit such an action, it cannot but lead to a social catastrophe."



5.4 In Mohanan Nair's case (supra), the Hon'ble Kerala High Court has held as under:

"10. A public authority may not act outside its powers. This principle is the centre piece of administrative law. (Administrative Law - HWR Wade, Fifth Edition, Page 38). Administrative acts or orders which are ultravires are void in law. This basic principle of administrative law has been extended to various situations. A new facet of the doctrine of ultravires, is illustrated by this case. If delegation of power is one side of the coin, the other side is represented by surrender or abdication of authority. The authority to transfer belongs to the Director of Health Services. It is he who can exercise his discretion and decide whether the administrative exigencies demand the petitioner's transfer from the general Hospital, Pathanamthitta. He issued the order of transfer entirely on the direction of the minister. This is not to suggest that the minister has no authority to suggest transfer of the petitioner. But the exercise of discretion by the Director requires that he examines the ministers' suggestion critically and comes to an independent conclusion about the need to transfer the petitioner. Where, as in this case, the authority who possesses the power to transfer makes the order of transfer on the direction of the minister without critically examining it, such authority surrenders his authority to the minister. When the authority is so abdicated in favour of the minister what the Director of Health Services has done, by the order of transfer, is not an exercise of authority. He has surrendered or abdicated his authority. Therefore the authority to transfer has been exercised by the wrong hands. The resultant order therefore does not flow from the lawful authority. The order is therefore void."

6. The respondents in their reply have denied all the allegations of hostile discrimination made against the applicant and submitted that his transfer was on administrative grounds. They have also pointed out that the applicant had a cumulative stay of 26 years out of the total service of 32 years at Kollam which is his home town. He was there from the year 1979 onwards with just 4 years in 2 spells at Trivandrum, the next station nearest to Kollam. Even otherwise, no government servant has any vested right conferred by any law or rules to the extent that he should be indefinitely retained at one place and transfer is a part of the service conditions. With regard to the claim of the applicant that he is the elected President of a recognized association, they have submitted that the branch of ITEF at Kollam is not a recognized association as per the Central Civil Services (Recognition of Service Associations) Rules, 1993 and therefore, his claim that he represents a recognized service association is not correct. According



to them, the language used by the applicant in his representations is highly disrespectful and improper and the office bearers of no recognized associations would resort to such a kind of language in their representations to authorities risking withdrawal of recognition as per Rule 8 of the said rules, which would go against the avowed interest of members. The respondents have also denied the allegation that the applicant was transferred due to the complaints he preferred against the higher officers. The reasons, according to them, were the low performance of Kollam Range and the applicant's instigation on the other staff for the go slow programme which led to delay in issuing the refunds to the assessees at Kollam which affected the public interest. They have also relied upon para (iii) of the transfer guidelines at Annexure R2, according to which a person may be transferred from one place to another on administrative grounds when there are numerous complaints against him and there are some reasons to believe that they are justified, or where exigencies of service require his posting to another place. According to them, the report of the Commissioner of Income Tax in this regard has also been considered by the placement committee. They have further submitted that Kollam is not the only centre in Kerala region which is non-networked with National Computer Centre. Other centres like Thiruvalla with the same or lesser strength of staff has shown better performance with the same software. The very reason of transfer of Government servants from one station to another is based on the policy that no one should develop vested interest due to his prolonged stay in a particular station. The applicant's transfer is purely on administrative grounds in the interest of the department in general and the tax paying public of Kollam in particular, who would be interested in getting their refunds due within the time limit set by the Government. The transfer policy has several aspects which includes transfer on tenure basis, retention on administrative grounds, retention on compassionate grounds and transfer on administrative grounds. The allegation that the applicant has been victimized for carrying out the activities of the organization has been vehemently denied by the respondents. They have also refuted the contention of the applicant that the provisions contained in Articles 14 and

16 of the Constitution of India have been violated in his case. The transfer order is based on administrative convenience and well settled policy of transferring government servants and is not as a punitive measure. There is no such policy to the effect that only those against whom complaints or disciplinary proceedings are pending should be or should not be transferred. It is a matter of common knowledge that one is liable to be transferred if he had put in considerable number of years of service at a particular station and in such situations no opportunity need be given to anybody before transferring him. The applicant's action as President of a service organization in writing letters to higher authorities in vituperative/derisive language is violative of Rule 6(k) and 6(i) of the Central Civil Services (Recognition of Service Associations) Rules, 1993. His deferment of promotion or his family circumstances like illness of mother, employment of his wife at Kundara are not grounds for his continuous retention at Kollam where he worked for 26 years out of his total service of 32 years. His case does not fall within paragraph 2.6 of transfer policy (A-4) which deals with illness of only spouse and children and not mother.

7. In the Annexure A-2 order dated 26.5.2008 also, the respondents have submitted that the transfer of the applicant was on administrative reasons and as per unanimous decision taken by the placement committee consisting of the CCIT, Kochi, CCIT, Trivandrum and the Director General of Income Tax (Inv.), Kochi duly constituted for the purpose of transfer and placement of officers and staff of the Income Tax Department in Kerala. According to them, the applicant enjoyed the benefit of being not accountable for achieving the target for nearly 32 years from 1976 when he joined the department and has foregone the opportunity to be promoted as Income Tax Officer in the year 2007. The applicant used to disturb and destroy the harmony and peace which was prevailing in the Kollam range. He also used to cause difficulties to Assessing Officers and Additional CIT in Kollam Range and also the CIT, Trivandrum. He was attached to Central Circle, Kollam which was for most of the financial year, held as additional charge by officers posted in other stations, and there was nobody to take note of his



regularity in attendance or other activities in the office. As a result, he could not be made accountable even indirectly for the difficulties caused by him in Kollam Range or to the officers at Kollam and the CIT, Trivandrum. The Respondents also submitted that on an average there were 12 STAs and TAs in addition to atleast 8 Inspectors in the month of April, 2007 to March 2008 in Kollam Range but the returns processed per staff are abysmally low as revealed from the following statistics regarding processing of returns in Kollam Range for the months of March, 2007 to March, 2008 based on data available such as CAP-I Report, Attendance Register of Kollam Range:-

Month	Number of TAs/STAs	Total returns processed in the month	Returns processed per STA/TA per month	Returns processed per staff per day
March '07	12	373	43	Less than 3
April '07	12	-	Nil	Nil
May '07	12	699	87	Less than 5
June '07	12	225	28	Less than 2
July '07	12	1727	216	Less than 12
Aug. '07	12	215	27	Less than 2
Sept. '07	12	*	* 175 (average of 4 months)	*Less than 10
Oct. '07	12	*		
Nov. '07	12	*		
Dec. '07	12	* 5613		
Jan. '08		3061	383	Less than 22
Feb. '08		1436	180	10
March '08	Figures ignored on account of allegation of manipulation of statistics of disposal and month end pendency.			

* Note : The statistics for September, October & November is not available because of a decision from various officers and staff or September, October & union not to send the relevant reports for these months, as a part of an all India agitation. Hence, the figure available for December 2007 is utilized to work out the disposal for the four months from Sept. 2007 to December 2007.



Month	Total returns for processing upto the end of the month	Total number of returns processed during the month	Total returns processed in the financial year upto the end of the month	Pendency at the end of the month
Mar. '07	44040	373	39856	4184
April '07	4604	Nil	Nil	--
May '07	5659	699	699	4960
June '07	6793	225	924	5869
July '07	23413	1717	2641	20772
Aug. '07	25879	215	2856	23023
Dec. '07	33943	5613 for four months i.e. 1,404 per month	8469	25474
Jan. '08	35084	3061	11530	23554
Feb. '08	36191	1406	12936	23255
Mar. '08	38345	20184	33120	5225

9. The respondents have also submitted that not even one worker in Kollam gave output that can be expected from an STA/TA of average capacity which clearly indicates that all of them were under pressure or fear, not to perform. As President of the local unit the applicant has the duty to advise the members to act with responsibility and not to harm the interest of the department and cause difficulties to their superior officers who are accountable for the work in the department. With his seniority, long term posting in Kollam and his position in the ITEF he was in a position to persuade the officials to work with responsibility. He did not do so. On the other hand, he took every opportunity to make the life of officers including senior officers as miserable as possible. The applicant was closely watching the performance in Kollam Range as is clear from the complaints he made in the name of Swami's software, requisitioning of returns by the CIT and the quickness he has shown in raising complaints about manipulating the number of returns processed. But he did not do anything to improve the very slow rate of processing of returns as his aim was not processing of returns but to impede the same and project the image that more returns were pending, with all consequential inconveniences to the officers and the department. His using of official equipments and time to fax to the higher



ups to cause enquiries into manipulation (inflation of figures of returns processed) and to cause investigation reflects a vindictive attitude to senior officers who would have been administratively his higher ups but for his posting in the Central Circle, Kollam. The applicant has made several unreasonable demands in the name of ITEF, Kollam Branch even when Joint Consultative Machinery existed for sorting out genuine grievances in amicable manner. He bypassed it and sent complaints to higher ups. Some of the instances pointed out by the respondents in the Annexure A2 letter are mentioned below as it is:-

- i) The negative and demisive language used by him in letter date 05.04.2007 sent to CCIT, Kochi with copy to CIT, Thiruvananthapuram and Addl. CIT, Kollam seeking permission to "felicitate" CIT, Thiruvananthapuram and ADDL CIT, Kollam is an act unbecoming of a Government servant. It is mentioned in the letter that a copy has been marked to DGIT (Vig.), New Delhi. He had no authority under any rule or decent social practice to "felicitate". Eventhough he had not signed the letter, the letter dated 20.4.2007 referred to in next sub paragraph makes it clear that he had sent the same. The letter referred is apparently marked to DGIT (Vig.).
- ii) However, the letter dated 20.4.2007 addressed to SEcretary, ITEF (with copy to CCIT, Kochi and Thiruvananthapuram, CIT, Thiruvananthapuram and Addl. CIT, Kollam Range) starts with the statement that no such letter has been sent to DGIT (Vig.). The aim of the letter dated 5.4.07 sent by him is to indirectly threaten superior officers and is an act unbecoming of Government servant.
- iii) In the letter dated 20.4.2007 he made negative remarks against Addl. CIT, Kollam range about his rejecting subsistence allowance to Shri Yohannan Kutty, knowing well such provisions is not available to a dismissed employee. The indirect disapproval of the applicant for denying subsistence allowance to Shri Yohanan is clear from the letter. In paragraph 2 in letter dated 20.4.07 he criticizes the CIT and



Addl. CIT for favouritism in granting ranges. Such allegations and direspect to seniors through public letters, is an act unbecoming of a Government servant. Certain parts of the letter borders on sectarianism which is unconstitutional.

iv) He sent a letter dated 1.4.2008 personally accusing CIT, Thiruvananthapuram. Applicant had no authority to send copies of his internal correspondence to other IT authorities and Grievance Cell of CBDT. This is unbecoming of a Government servant.

v) The CIT, Thiruvananthapuram had found that he jointly with Shri N. Thampi had sent the letter dated 1.4.2008 using fax of Central Circle, Kollam, making unproven allegations against CIT, Trivandrum. Applicant had used Government facility to disseminate unproved allegations against the Commissioner of Income Tax, Thiruvananthapuram. Copy of this was marked to Chairman, CBDT.

10. According to the respondents, the aforesaid instances would show that the applicant was causing hostile and negative atmosphere in Kollam which was affecting tax administration, employee morale and indirectly the tax paying public. These acts reflect the great hostility and disrespect that he is maintaining against senior officers. His involvement in some undesirable activities are difficult to be proved while there are materials to prove his involvement in some activities. After examining the evidences and report of CIT, Thiruvananthapuram, the members of the Placement Committee came to a conclusion that the applicant has acted in a manner highly injurious to the conduct of work at Kollam Range and his continuation there would harm the interest of the Assessing Officers, Addl. CIT, CIT and indirectly CCIT, Trivandrum and spoil the relations of the officers with general public. It was felt by all in the placement committee that he had inflicted great damage to the peace, harmony and discipline that is essential for proper and effective functioning of any office. It is in these circumstances, and keeping the interests of the Department in mind that the Members of the



Placement Committee decided to transfer him to Mattancherry, a smaller station, in the hope that he would realize his mistake and correct himself.

11. During the course of the hearing learned counsel for the applicant pointed out that the respondents have not given any reply to the ground taken by him in paragraph (H) of the OA. We have therefore, directed the respondents to file a specific reply in this regard.

12. In the additional reply filed by them they have stated that due to an inadvertent omission the allegation contained in ground 5 paragraph (H) of the OA could not be explained in detail. They explained that they were compelled to transfer the applicant out of Kollam on the basis of mischievous behaviour which are detrimental to the interest of department. He was creating various problems instigating other members of the staff to destroy the peaceful atmosphere of the office of the Addl. CIT, Kollam. The Commissioner of Income Tax, Thiruvananthapuram had communicated to the Chief Commissioner of Income Tax pointing out the mischief created by the applicant, which were adversely affecting the disciplined functioning of the office. In order to avoid further unpleasant situation in the office there was no other alternative but to transfer him out of Kollam. Therefore, the applicant's case is not comparable with those of other persons with more number of years of service who have been retained in Kollam.

13. I have heard Mr. M.R. Hariraj, learned counsel for the applicant and Ms. Jisha for Mr. TPM Ibrahim Khan, SCGSC, learned counsel for the respondents. It is seen that the basis for the transfer of the applicant is that as per the guidelines for transfer of non-gazetted staff a person can be transferred from one place to another on administrative grounds, namely, where there are numerous complaints against him and there are some reasons to believe that the complaints were justified, or where exigencies of service require the posting to another place. Applicant is an Inspector and had the benefit of continuous stay at Kollam, his home town from the year 1979 onwards with just four years in two spells at Trivandrum, the station



next nearest to Kollam.

14. Following are some of the cases in which the Apex Court has considered the question of transfer of a government employee and laid down the law regarding the same.

- a) E.P. Royappa Vs. State of Tamilnadu, AIR 1974 SC 555
- b) B. Varadha Rao Vs. State of Karnataka & Ors., AIR 1986 SC 1955
- c) Mrs. Shilpi Bose & Ors. Vs. State of Bihar & Ors., AIR 1991 SC 532
- d) Union of India Vs. S.L. Abbas, AIR 1993 SC 2444
- e) State Bank of India Vs. Anjan Sanyal & Ors., 2001 (5) SCC 508
- f) National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan & Anr., 2001 (8) SCC 574
- g) V. Jagannadha Rao Vs. State of A.P., JT 2001 (9) SC 463
- h) Union of India & Ors. Vs. Janardhan Debanath, 2004 (4) SCC 245
- i) State of U.P. & Anr. Vs. Siya Ram & Anr., 2004 (7) SCC 405
- j) Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey & Ors., 2007 (2) SCC (L&S) 597

14.1 In E.P. Royappa (supra), the Apex Court has held that:

"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to malafide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot but be held as mala fide. A transfer is malafide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose than is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration, that even administrative actions should be just and fair."

14.2 In B. Varadha Rao (supra), the Apex Court has held that:

"4. We agree with the view expressed by the learned Judges that transfer is always understood and construed as an incident of service. The words 'or other conditions of service' in juxtaposition to the preceding words 'denies or varies to his disadvantage his pay,

allowances, pension' in R. 19(1)(a) must be construed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the Government servant and some disadvantage touching his pay, allowances, pension, seniority, promotion, leave, etc. It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. As the learned Judges rightly observe:

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

14.3 In Mrs. Shilpi Bose (*supra*), the Apex Court has held that:

"4. In our opinion, the courts should not interfere with a transfer order 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 *mala fide*. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer 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 or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

14.4 In S.L. Abbas (*supra*), the Apex Court has held that:

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by *mala fides* or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of

administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

14.5 In *Anjan Sanyal* (supra), the Apex Court has held that:

"4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order....."

14.6 In *Shri Bhagwan* (supra), the Apex Court has held that:

"It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

14.7 In *V. Jagannadha Rao* (supra), the Apex Court has held that:

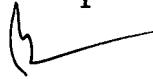
10. Transfer in relation to service reduced to simple terms means a change of place of employment within an organization, as stated in New Oxford English Dictionary , 1993 Edition, Vol.2, p.3367. It is an incidence of public service and generally does not require the consent of the employee. In most service rules, there are express provisions relating to transfer. For example, Fundamental Rule 15 provides:

"F.R.15(a) The President may transfer a Government servant from one post to another; provided that except

(1) on account of inefficiency or misbehaviour, or

(2) on his written request,

a Government servant shall not be transferred substantively to, or, except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on



which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14.

(b) Nothing contained in clause (a) of this Rule or in clause (13) of Rule 9 shall operate to prevent the re-transfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of clause (a) of Rule 14.

Service rules sometimes define transfer. For example, supplementary Rule 2(18) of the Fundamental Rules governing Central Government servants defines transfer in the following terms:

Rule 2(18): Transfer means the movement of a Government servant from one headquarter station in which he is employed to another such station, either

(a) to take up the duties of a new post, or

(b) in consequence of change of his headquarter.

Though, definitions may differ and in many cases transfer is conceived in wider terms as a movement to any other place or branch of the organization, transfer essentially is to a similar post in the same cadre as observed by this Court in B. Varadha Rao vs. State of Karnataka (AIR 1987 SC 287). It is now well settled that a government servant is liable to be transferred to a similar post in the same cadre which is a normal feature and incidence of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified non-transferable post. No transfer is made to a post higher than what a Government servant is holding. In other words, it is generally a lateral and not vertical movement within the employers organization.

14.8 In Janardhan Debanath (supra), the Apex Court has held that:

"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purpose of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the *prima facie* satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to

consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs."

14.9 In Siya Ram (supra), the Apex Court has held that:

"5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan.

6. The above position was recently highlighted in Union of India v. Janardhan Debanath. It has to be noted that the High Court proceeded on the basis as if the transfer was connected with the departmental proceedings. There was not an iota of material to arrive at the conclusion. No mala fides could be attributed as the order was purely on administrative grounds and in public interest.

7. In view of the settled position in law the judgment of the High Court is indefensible and is set aside."

14.10 In Damodar Prasad Pandey (supra), the Apex Court has held that:

"4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see Abani Kanta Ray v. State of Orissa). Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see Union of India v. S.L. Abbas). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any

operative guidelines or rules the courts should not ordinarily interfere with it."

15. In all the above cases, the Apex Court was consistent in saying that the transfer of a government servant is an incidence of service and nobody has the vested right to choose his place of posting.

16. I, therefore, do not find any merit in the case. Accordingly, the same is dismissed. There shall be no order as to costs.


(GEORGE PARACKEN)
JUDICIAL MEMBER

"SA"