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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No.489/2010
This the 12th day of October 2011

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Mr. S.P. Singh, Member (A)

1. Subhendu Roy s/o Late Upendra Kumar Roy, aged about 56 years, President Geological Survey of India Employees Association, Northern Region Executive Council, GSI, Complex, Sector-E, Lucknow, also Staff Side Leader of the Regional Office Council, under the JCM Machinery, of GSI, NR, Lucknow, and presently working as Assistant in Project STM, State Unit of Operation U.P. & Uttrakhand, G.S.I., N.R. Lucknow and R/o Type-III/08, GSI, Colony Sector-Q, Aliganj, Lukcnow-226024.

2. Ram Lakhan s/o Late Shri Hanuman Prasad, r/o 6/Ks/47, Mall Avenue Lucknow, President of the Geological Survey of India Employees Association (Regd. No.822), G.S.I., N.R. Lucknow, and a Member of the Northern Region Executive Council of GSI, NR, Lucknow, under J.C.M. Machinery, and working as J.T.S. (D.O.), at Map & Cartography Division, GSI, N.R., Sector-E, Aliganj, Lucknow.

3. Syed Azizul Hasan Rizvi, son of late Shri Syed Abul Hasan Rizvi, aged about 48 years, General Secretary, Geological Survey of India Employees Nav-Chetna Association Lucknow (Regd. No.9616) having its registered office at 466/200-201, Primrose House, Peer Bukhara, P.O. Chowk Lucknow-226003 (U.P.) and working as Stenographer Gr.II, at the Petrology Division, G.S.I., N.R., Sector-E, Aliganj, Lucknow.

...Applicants.

By Advocate: Sri R.C. Singh.

Versus.

1. Union of India, represented through its Secretary, Govt. of India, Ministry of Mines, Department of Mines, Shastri Bhawan, New Delhi.

2. The Director General, Geological Survey of India, 27 J.L. Nehru Road, Kolkata-16.

3. The Dy. Director General, Geological Survey of India, Northern Region Headquarters at Sector-E, Aliganj, Lucknow.

.... Respondents.

By Advocate: Sri Pankaj Awasthi holding brief for Sri R. Mishra.

Connected with

Original Application No.485/2010

Om Prakash Nigam abed 42 years S/o Late A.K. Nigam, R/o Phool Nikunj, C-905, CID Colony, Mahanagar, Lucknow.

... Applicant.

By Advocate:- Sri A. Moin.

Versus.

Union of India through

1. Secretary (Mines) Department of Mines, Shastri Bhawan, New Delhi.

2. Director General, Geological Survey of India, 27 J.L. Nehru Road, Calcutta-16.

3. Deputy Director General, Geological Survey of India, Northern Region, Sector 'E' Aliganj, Lucknow.

.... Respondents.

By Advocate: Sri Sri Pankaj Awasthi holding brief for Sri R. Mishra.

Connected With

Original Application No.486/2010

Bagesh Mishra about 33 years S/o Sri S.K. Mishra, R/o C-29, Sector CS, Aliganj Scheme, Sitapur Road Scheme, Lucknow.

... Applicant.

By Advocate:- Sri A. Moin.

Versus.

Union of India through

1. Secretary (Mines) Department of Mines, Shastri Bhawan, New Delhi.
2. Director General, Geological Survey of India, 27 J.L. Nehru Road, Calcutta-16.
3. Deputy Director General, Geological Survey of India, Northern Region, Sector 'E' Aliganj, Lucknow.

.... Respondents.

By Advocate: Sri Sri Pankaj Awasthi holding brief for Sri R. Mishra.

Connected With

Original Application No.176/2011

Shyam Narain Tsandon about 50 years S/o Late P.K. Tandon R/o 315/83, Ban Wali Gali, Chowk, Lucknow.

... Applicant.

By Advocate:- Sri A. Moin.

Versus.

Union of India through

1. Secretary (Mines) Department of Mines, Shastri Bhawan, New Delhi.

2. Director General, Geological Survey of India, 27 J.L. Nehru Road, Calcutta-16.

3. Deputy Director General, Geological Survey of India, Northern Region, Sector 'E' Aliganj, Lucknow.

.... Respondents.

By Advocate: Sri Sri Pankaj Awasthi holding brief for Sri R. Mishra.

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Vide order-dated 05.08.2011, all the aforesaid O.As. have been clubbed and therefore these O.As. are being disposed of by a common judgment.

2. There is a common impugned transfer order in all the O.As. The main ground of challenge is that there is no transfer policy in respect of Group-'C' and 'D' employees, who are working on the post other than sensitive post of the establishment. Though there are several longest stayees but the applicants have been transferred arbitrarily against the professed norms in an arbitrary manner. The applicants of O.A.No.489/2010 have taken an additional plea that they being Chief Executives of the Unions registered and recognized under the J.C.M. Scheme are protected under the relevant O.Ms. issued by DOPT and Ministry of Home Affairs for not transferring them form Headquarters unless there are special reasons. Still they have been transferred. We are taking up O.A.No.489/2010 first.

3. O.A.No.489/2010 has been filed for the following relief's:-

> "1. That this Hon'ble Tribunal may graciously be pleased to set aside the impugned order dated 09.11.2010 (Annexure No.1) to the extent it relates to the applicants, with all consequential benefits, in the interest of justice;
>
> 1-A That this Hon'ble Tribunal may graciously be pleased to set aside the impugned orders/ letters dated 22.11.2010 and 30.11.2010 (contained in Annexure No.A-8 and A-9 of the original application) through which the representations of the applicants no.2 and 3 have been rejected after summoning the original records.
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> 2). That the Hon'ble Tribunal be pleased to pass any such order or direction which it deems fit and proper and just in the interest of justice in favour of the Applicants."

4. This O.A. has been filed by three applicants impugning the common transfer order dated 09.11.2010 by means of which they have been transferred from the Administrative Head Office and the Headquarters at Geological Survey of India, Aliganj, Lucknow to its subordinate/ Circle offices. The contention is that transfer order has been passed on the basis of extremely extraneous, malafide, unjust and illegal consideration and arbitrarily exercising colourable exercise of power in bad faith ignoring the relevant rules, procedures, policies and against the sprit of Constitution of India. According to the applicants they are the chief and key executives/office bearers of the recognized service Associations. At the time of transfer, the applicant No.1 was working as Assistant and posted at Project STM, Stare Unit of Operation U.P. & Uttrakhand in Geological Survey of India, Northern Region, Lucknow. He is the President of the Geological Survey of India Employees Association, Northern Region, Executive Council, recognized by the Govt. of India and is also the Staff Side Leader of the Regional Office, under the JCM

Machinery of the G.S.I., Northern Region, Lucknow and also Member of the Central Executive Council of his Union. Similarly, applicant no.2 was working as Junior Technical Assistant (D.O.), and posted at Map and Cartography Division of GSI. He is President of Geological Survey of India Employees Association (Regd. No.822) and recognized by the Govt. of India and also a Member of Northern Region Executive Council/Regional Office Council of the G.S.I., Northern Region Office/ Department under the J.C.M. at the Lucknow Headquarters. The applicant no.3 was working as Stenographer Gr.-II and posted at the Petrology Division of G.S.I., Northern Region, Lucknow. He is the General Secretary of the Geological Survey of India Employees Nav Chetna Association, Lucknow. According to the applicants the DOPT has issued O.M. No.27 (7)/88-CS.IV dated 19.08.1988. Similarly, Department of the Ministry of Home Affairs has issued an O.M. No.26/3/89- Estt. (B) dated 08.04.1969 (Annexure-2). According to this O.M., the President and the Secretary of the recognized union/ Association should not except for special reasons be shifted from main Administrative office to subordinate office. It is said that the applicants have to look after the interest of employees so that their moral could be high and they can discharge their duties with full devotion. Time and again they had been raising the constructive issues by highlighting the reasonable grievances of the employees but the opposite parties are not taking the same activities bonafidely. In respect of personnel's who are holding sensitive posts for more than three years, the Govt. of India, G.S.I., Kolkata taken a

policy decision in 2008 (Annexure-5) to transfer such personnel's on rotational basis after three years but this policy has never been implemented by opposite parties. However, the applicants are not holding any of the sensitive posts even then they have been subjected to outstation transfers. The sensitive posts described in the aforesaid order dated 27.06.2008 are mainly held by personnel's for more than 10,15, 20 and 25 and more years who are close and favourite of the administration. Therefore, they are not being transferred. The opposite parties are suppressing the legal and recognized Unions by taking such arbitrary decisions of transfers. Feeling aggrieved by arbitrary and malafide action of opposite party no.3, a representation dated 16.11.2010 was submitted by Registered Office Council Side Secretary. In addition to the above representation all the applicants have also submitted their representations on 11.11.2010, 15.11.2010, 16.11.2010, 22.11.2010 and 23.11.2010. The representations preferred by the applicant no. 2 and 3 have been rejected vide order dated 22.11.2010 and 30.11.2010 (Annexure-A-6 and A-9). While rejecting these representations, besides the public interest a new ground has also been mentioned i.e. "functional requirement", which is not tenable.

5. In the detailed Counter Affidavit filed on behalf of the Respondents No.1 and 3, it has been said that applicant no.1,2 and 3 have served 26 years, 24 years and 28 years respectively at Lucknow. In respect of applicant no.1 holding the post of President of the G.S.I. Employees Association, Northern Region

recognized by Govt. of India under J.C.M. Machinery of G.S.I. It has been merely said that it is matter of record hence does not call for any reply. However, it has been added that applicant no.1 had already complied with transfer order dated 09.11.2010 and has joined at Chandigarh. Therefore his cause of action has become infructuous. In respect of applicant no.2, it has been said that according to Constitution of Association, of which he claims himself to be President, in fact no post of President exists. According to its constitution, there is a post of Chairman (Annexure-CR-1 and CR-4). But registration of this Association by Govt. of India under J.C.M. Machinery has been admitted. In respect of applicant no.3, it has been said that the Association of which applicant no.3 claims himself to be General Secretary has not been recognized under the Central Civil Services (Recognition of Service Association) Rules, 1993. The transfers in question have also been justified on the ground of shortage of manpower at outstations offices.

6. In the Rejoinder Affidavit on behalf of all the applicants the pleadings contained in O.A. have been reiterated. It has been further submitted that there is no transfer policy approved by the competent authorities in respect of applicants and other employees belonging to non-sensitive places and posts. The persons posted on sensitive posts are occupying their posts for a long period and few transfers affected by the respondents in their respect are only cosmetic and within Lucknow only. The applicant no.1 has not sacrificed his legal right and has joined on transfer under protest. It has been further said that there is

hardly and difference between the words 'Chairman', 'President', 'Chairperson', 'Presiding Officer', 'Adhyaksha', 'Sabhapati'. All the words are synonyms of each other and carry the same meaning. In respect of the Association of which applicant no.3 is General Secretary, it has been said that Article-19 (1) (c) of the Constitution does not make any distinction between the recognized and unrecognized Union. Therefore, the provisions of the O.M. which run contrary to the Trade union Act, 1926 (Central Act) are ultra-virus of the act and Constitution of India.

7. A supplementary affidavit on behalf of the applicants dated 01.12.2010 has also been filed saying that there is no transfer policy in respect of Group-'C' and 'D' employees and the applicants are Group-III employees of G.S.I. In the category of applicant no.1 large number of longest stayees both junior and senior to the applicant are working for the last 10,15,20,25 years for example:- Sri Madan Lal, Smt. Suman Garg, Mohd. Samim Ahmad, D.K. Nagar, Sandeep Grover, Satish, Ram Naresh, Krishna Bahadur, Sher Mohd. Khan, Geeta Gupta, Virendra Kumar, Persuram, Lai Bahadur, Uma Shanker, Ravi Sharma, Prashat Mishra, Mohd. Naseen Kahn, R.K. Saxena, Kamlesh Srivastava, Anwar, Nathu Ram, J.P. Mishra, (now retired) Shamshuddin, S.N. Singh. Similarly, in the category of applicant no.2 the longest stayees have not been transferred for example Sri Narander Kumar, Vineet Niga, Ashok Kumar, M.K. Sadhu, J.V. Georde, Tilak Chandra, Manjeet Kaur, Beena Arora, Amit Burman, Renu Diwvedi, M.B. Sharma, who are senior to the applicant no.2 and Sri Sarita Kapoor, Anup Kumar, V.P.

Mishra, Rajneesh Khanna, Murari lal, Sakra Bhagat, Surbhi Pd., Param Hans Ram, Furkana Bano Rizvi, Vishva Nath Gautam, Ved Prakash, Virendra Kumar, Gadhi Ram, Naseem Jahan, Vikas Khanna, Salman Mushtaq, Rakesh Kumar, Alok Gupta, Subhash Chand, who are juniors to the applicant. Similarly in respect of applicant no.3 also few such names have been cited as Sri Jageshwar Yadav, A. Prajapati, Rais Ahmad, Dharmender Singh, Mohd. Rizwan Anjum, Usha Devi, Pool Chandra, Bhukhan Singh, Rachna Agrawal, S. Mukerji, Minati Mukerji, L.S. Bist, Bhandari. The list of such official contained in Annexure-10 and Annexure-11 have also been filed.

8. Another Counter Affidavit on behalf of the Respondent Nos.1 and 3 has also been filed in this case saying that applicant no.1 Sri Subhendu Roy vide his application dated 12.11.2010 requested for transfer T.A. Advance which was given to him and he received it on 24.11.2010. Thereafter on 25.11.2010, this O.A. has been filed. It has also been averred that after passing of the transfer order dated 09.11.2010 the applicants have been relieved w.e.f. 30.11.2010. Lastly, it has been said that the transfer order has been made in accordance with the general transfer policy guidelines issued by circular dated 17.08.2010.

9. In the Rejoinder Affidavit filed against the aforesaid C.A., it has been pointed out that the aforesaid order dated 17.08.2010 is merely for perusal of Hon'ble Minister/Secretary to the Ministry of Mines. It has no acceptance and has no legal binding value. Moreover, this proposed circular is in respect of officials posted on sensitive posts so that they may be kept rotating. But,

even these guidelines have not been followed by transferring such officials. In respect of applicant no.1, it has been said that by accepting transfer T.A. advance he has not sacrificed his legal right to challenge his transfer before a Court of law.

10. We have heard the learned counsel for the parties and scrutinized the material on record.

11. The transfer order in question has been challenged mainly on the following grounds;

1. Being chief Executives of Registered and Recognized Union by the Govt. of India under the J.C.M. Machinery of G.S.I., Northern Region, Lucknow Headquarters at regional level the applicants could not have been transferred accept for special reasons as provided in the O.M. dated 08.04.1969 and 19.08.1988 issued by the DOPT.

2. As there is no transfer policy in existence, the transfers should have been made in a fair and just manner. But the impugned transfer has been made in an arbitrary manner of only eight persons ignoring the longest stayees. Therefore the transfer has been made against the Professed norms of transfer.

3. Malice in law.

12. Now we proceed to deal the aforesaid grounds in the following manner.

13. Admittedly, at the time of impugned transfer order applicant no.1 who had been working as Assistant and was posted at project STM, State Unit of Operation U.P. & Uttarkhand, G.S.I., Northern Region, Lucknow and R/o Type-III/08, GSI, Colony Sector-Q, Aliganj, Lucknow and was

President Geological Survey of India Employees Association, northern Region. Similarly applicant no.2 working as J.T.S. (D.O.), at Map & Cartography Division, GSI, N.R., Sector-E, Aliganj, Lucknow at the time of transfer, was President of the Geological Survey of India Employees Association (Regd. No. 822), G.S.I., N.R., Lucknow.

14. It is not denied that both the above Unions are registered and recognized by the Government of India under J.C.M. Machinery of G.S.I., Northern Region, Lucknow Headquarters at Regional level.

15. It has also not been disputed that the O.Ms. dated 08.04.1969 and 19.08.1988 issued by the DOPT and Ministry of Home Affairs (Annexure-A-2) still occupy the field as under:-

> **"4. (i). Transfer of the union Executive to the Headquarters:-**The Chief Executive of the Union is defined in the Constitution of the Union/ Association , etc. , or the General Secretary or where the Chief Executive has not been specifically defined, the General Secretary may be brought on transfer to the Headquarters of the administrative head as far as possible. If the transfer to the Headquarters involves exemption form field duty, such transfer facility should be restricted to Chief Executive/ General Secretary and one other executive member of each of the recognized association. However, when specific guidelines are available in any particular department in this regard, those instructions would apply.
>
> **(ii). Union functionaries of JCM should not be shifted form Main administrative office to subordinate office:-** The President and General Secretary of the Branch unit of the recognized Union/ Association who are members of the Staff Council should not, except for special reason, be shifted from main administrative office to subordinate office (including other officers or buildings)."

16. There are pleadings of the applicants to the effect that they have looked after the interest of the employees so that their moral could be high and they can discharge their duties with full devotion. That time and again they had been raising the constrictive issues by high lighting reasonable grievances of the employees. These pleadings have not been denied. It is also not denied that President and Secretary are supposed to be Chief Executives of the registered and recognized Union of the Association. However, in respect of applicant no.2, it has been merely said by the respondents that according to the constitution of his Union there is post of Chairman and not President. Nevertheless, registration of his Union by Government of India under J.C.M. Machinery has been admitted. In fact there is hardly any difference between 'Chairman', 'President', 'Chairperson', 'Presiding Officer', 'Adhyaksha', etc. All the words are almost synonyms of each other and carry the same meaning as contended by the applicants. Therefore as far as the applicant nos.1 and 2 are concerned, it appears that being Chief Executives of the Union, both of them had the protection of the aforesaid O.Ms. issued by the DOPT and Ministry of Home Affairs, as their Unions are duly registered and recognized by Government of India under J.C. M. Scheme. Both of them should not have been shifted from main administrative office to subordinate office except for special reasons as provided under the O.M. dated 19.08.1988. The perusal of the common transfer order shows that all the 8 transfers have been done allegedly in the interest of Public service. In other words these

transfers appear to be general transfers. No special reasons are mentioned either in the transfer order or in the detailed counter affidavit for shifting both the above applicants from main administrative office. In the O.M. dated 18.04.1969, it has been rather provided that if chief executives of the recognized Union are out side they should be brought on transfer to Headquarters of the administrative head as far as possible. The idea is to bring and retain the Chief Executives of the recognized Union at the Headquarters of the Administrative Head so that they may put up problems of the members of the Union i.e. employees, before the Administrative Head, who are available at the Headquarters and their grievances may be redressed from time to time and the employees may work smoothly giving their best output. However this privilege has been extended to the Chief Executives of only those Union or Association who are recognized and registered under J.C.M. scheme which has been given effect by the Government/ Department itself. It is not denied that applicant nos. 1 and 2 are Chief Executives of the Union/Association, which have been duly registered and recognized under the J.C.M. Scheme. The aforesaid O.Ms. laying down the above policy have been issued by none other then Ministry of Home Affairs and the DOPT. This scheme can be ignored only when specific guidelines are available in any particular department in this regard. In that case instructions contained in those specific guidelines would be applicable as has been provided in O.M. dated 08.04.1969. According to respondents there is general transfer policy guidelines issued

by CL dated 17.08.2010. But, as pointed out from the side of the applicants the perusal if this letter shows that it was meant merely for perusal for Hon'ble Minister/ Secretary to the Ministry of Mines. There is nothing on record to show that it was ever accepted or implemented. Therefore it cannot have any legal binding. Moreover this proposal is only for those officials who are posted on sensitive post so that they may be kept rotating. According to the applicants in respect of employees holding sensitive post for more than three years the Government of India has taken a policy decision on 27.06.2008 (Anexure-5) for transferring such officials on rotational basis. But, even this policy has never been implemented by the respondents in respect of officials holding sensitive post for more than 10, 15, 25 years. These pleadings have been denied merely in a general and fragile manner. In the pleadings of the applicants about 24 names have been mentioned who belong to the category of applicant no.1, and who are longest stayees but they have been spared. Similarly in the category of the applicant no.2 more than 10 names have been mentioned, who are said to be the longest stayees but they have not been transferred. The respondents did not specifically controverted these pleadings also. The applicant no.3 also claimed himself Chief Executive of the Union but according to the record ,it could not proved that it was registered and recognized under the J.C.M. Scheme. Nevertheless he is atleast entitled to be treated fairly and not arbitrarily. As there was no transfer policy in respect of employees not holding sensitive posts, then their transfer ought

to have been done in a fair and transparent manner and not on the basis of pick and choose. There is specific pleading in respect of applicant no.3 also and at least 12 names have been given in the O.A. who are longest stayees but they have been spared. This pleading has also not been controverted specifically. There is no plausible and convincing explanation form the side of the respondents in respect of sparing longest stayees.

17. It is settled law that a transfer is an incident of service and is not to be interfered with by the Court unless it is shown to be arbitrary or vitiated by malafides or infraction of any professed norm or principle governing the transfers as has been held in the case of **N.K. Singh Vs. Union of India reported in (1994) 6 SCC-98** which has been referred in the judgment of **Abani Kanta Ray Vs. State of Orissa and Others reported in 1995 Supp (4) SCC-169** upon which reliance has been placed by the applicant. The learned counsel for applicants submitted that in the present case there is no transfer policy inexistence for the officials, who are not working on sensitive post. In such a situation the professed norm has to be that longest stayee to go first. But in the present case there are several longest stayees in respect of all the three applicants, whose names have been specifically brought on record by means of affidavit saying that instead of transferring them, the applicants have been transferred arbitrarily. The factam of not transferring above named longest stayees have not been specifically controverted. Any explanation has also not been

given for that. The Union activities of the applicants who are holding the post of chief executives of recognized Unions might have been inconvenient to respondents entailing transfer of applicants in the garb of alleged "interest of public service". From the side of the applicants reliance has also been placed on the case of **Jayashree L. Narayanan (Mrs) and Another Vs. Union of India & Another reported in (1993) 23 ATC-836**-- wherein , it has been laid down that normally a person who served long at the same station continuously should be considered as a person who has to be transferred first. Similarly in the case of **E.P. Royappa Vs. State of Tamil Nadu 4 SCC-3**, it has been laid down by Hon'ble Supreme Court that when an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article-14. Articles-14 and 16 strike the arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on relevant principles applicable alike to all similarly situated and must not be guided by any extraneous or irrelevant consideration because that could be denial of equality.

18. It would also be relevant here to deal with another point raised by the respondents in respect of applicant no.1 that he had applied and received advance transfer allowance and thereafter filed O.A. Thereafter he has also complied with the impugned transfer order by joining at Chandigarh.

19. In this regard preposition of law laid down in the case of **Pradeep Kumar Argawal Vs. Director, Local Bodies, U.P.**

IV, Luucknow and Others reported in (1994) 1 UPLBEC-189 would be relevant to be mentioned here. In this case, it was laid down that the recourse open to the public servant is to approach higher departmental authorities in order to redress his grievance. At the same time, it would not be proper on the part of a Government servant to withhold compliance of the transfer order. Instead firstly it should be duly complied with by joining at the transferred place and then resort to raise grievance, if any, because failure on his part in complying with the transfer order, may result and would make him liable to disciplinary action under the applicable service rules. In this regard the Hon'ble Division Bench of Hon'ble High Court of Allahabad also referred to the case of Mrs. Shilpi Bose Vs. Stare of Bihar reported in AIR 1991 SC-532 and Union of India Vs. S.L. Abbas reported in Judgment Today SC-678. In view of this preposition of law there does not appear to be any impediment for the applicant no.1 to continue with his O.A. even though after taking advance transfer allowance he has joined at the new place of transfer which according to his pleadings has been done under protest reserving his right to challenge the arbitrariness of his transfer.

20. The impugned transfer order is claimed to has been made in the interest of public service. But it is well settled that in the matter of a transfer such expression "Interest of Public Service" may not by itself justify the transfer when it has been established that it is contrary to the normal principles of transferring longest stayees particularly when there are no

transfer guidelines as in the present case. In this regard reliance has been placed on the case of **Alexandar Kurian Vs. Director, Central Marine Fisheries Research Institute, Cochin and Another reported in (1988) 6 ATC-421**.

21. In the backdrop of the aforesaid preposition of law, we come to the conclusion that applicant nos.1 and 2, being Chief executives of the Unions/ Associations which were duly registered and recognized under the J.C.M. Scheme, were entitled to the protection given under the O.M.s dated 08.04.1969 and 19.08.2988 issued by the DOPT and Ministry of Home Affairs. Therefore they should not have been shifted/ transferred from the main administrative office except for special reasons. No such special reason have been mentioned in their transfer order. The respondents could not show any such special reasons even in their entire pleadings contained in the counter affidavit and supplementary counter affidavit. Otherwise also the impugned transfer order appears to has been made in an arbitrary manner. As there was no transfer policy in existence particularly in respect of the employees, who where not holding sensitive post, the transfers should have been made in a fair and just manner. But, contrary to that transfers have been made of only eight person including the applicants ignoring several longest stayees and for which no explanation has come forward. Therefore transfer of applicant nos. 1 and 2 is found to be against the professed policy envisaged in the above two O.Ms. Their transfer is also bad in eye of law on the point of longest stayees as discussed before. As far as applicant no. 3 is

concerned the above protection of two O.Ms. may not be available to him but his transfer order is also arbitrary and bad in the eye of law at least on the aforesaid point of longest stayees because normally a person who served long at the same station should to considered as a person who has to be transferred first as was held in the case of **Jayashree L. Narayanan (Mrs) (Supra).** It is also well settled that in the matter of transfer merely mentioning "Interest of Public Service may not by itself justify the transfer particularly when it has been established that it is contrary to the normal principles and particularly when there is no transfer guidelines. When an act is arbitrary, it is implicit in it that it is unequal and therefore violative of Article-14. In fact Articles -14 and 15 strike the arbitrariness in State action and ensue fairness and equality of treatment as was held in the case of **E.P. Royappa (Supra).** State action must be based on relevant principles applicable alike to all similarly situated and must not be guided by any extraneous or irrelevant consideration because that would be denial of equality. In the present case there also appears malice in law because the respondents unsuccessfully claimed that the impugned transfers have been made in the light of general transfer policy dated 17.08.2010. But as discussed hereinbefore, it has been found that the policy to which respondents were referring is merely a proposal meant for perusal of Hon'ble Minister/Secretary to the Ministry of Mines. The respondents could not show that it was ever accepted by competent authority and was ultimately implemented. Moreover,

it only pertains to the officials posted on sensitive posts so that they may be kept rotating. But, none of the applicants before us are holding any sensitive post or even a post dealing with public. Apparently, the respondents did not come before this Tribunal with clean hands. They rather tried to misguide. Probably they were guided by extraneous and irrelevant consideration in making impugned transfers. The consideration of non-existent material or any extraneous or irrelevant consideration gives birth to malice in law. In the present case the transfers are said to had been made by the respondents on the basis of transfer guidelines dated 17.08.2010 which was non-existent and is mere proposal in respect of only those employees who were working on sensitive posts or places whereas, the applicants of all the four O.As. were not working on any sensitive posts / places. Therefore the impugned transfer order also suffers from malice in law. Almost similar view was taken in the case of ***Somesh Tiwari Vs. Union of India and Others reported in (2009) 2 SCC-592*** upon which reliance has been placed by the learned counsel in connected O.A.Nos.485/2010, O.A.No.486/2010 and O.A.No.176/2011.

21. From the side of the respondents reliance has been placed on the following case laws:-

(i). **Vinod Kumar Pandey Vs. The State of U.P. and Others [2010 (28)LCD-232]**---In this case, it was laid down that transfer being exigency of service can be effected by the employer concerned in accordance with administrative exigency and in the interest of public and cannot be monitored

and guided by Court unless, it is shown that transfer order is vitiated on account of the contravention of statute, or lack of jurisdiction or malafide. This preposition of law is well settled and there is no quarrel on this point. But in the present case, the impugned transfer is contrary to the above O.Ms. (in respect of applicant no. 1 and 2 and also suffers from malice in law.

(ii). **Dr. Krishna Chandra Dubey Vs. Union of India decided on 05.09.2005** by Hon'ble high Court of Allahabad (Electrostate copy not indicating any writ petition no. etc.)----In this case it has been laid down that transfer is not only an incident but an essential condition of service. A catena of decisions of Hon'ble Supreme Court like **Mrs. Shilpi Bose Vs. Stare of Bihar and Union of India Vs. S.L. Abbas and also Sarvesh Kumar Awasthii Vs. U.P. Jal Nigam and Others (Supra)** have been referred in this judgment. There cannot be any dispute on the principles laid down in the case law. But for the reasons mentioned above, this case law has also no application in the present case.

22. It is noteworthy that vide impugned order dated 09.11.2010 eight officials have been transferred. Out of them only six have challenged it. Sri Subhendu Roy, Ram Lakhan, Syed Azizul Hasan Rizvi have challenged this order by filing above O.A.No.489/2010 on 25.11.2010. It was listed before Hon'ble Member (A) on 26.11.2010. On 29.11.2010, and then on 01.12.2010 and 02.12.2010 some wanting papers were filed. After considering the facts and circumstances of the case, it

was directed to be listed before Division Bench vide order dated 29.11.2010. No interim order could be passed in this case because at the initial stage the main emphasis which was laid in this O.A. was that all the three applicants are holding executive posts in the registered and recognized Unions and therefore they have protection of relevant O.Ms. issued by DOPT and Ministry of Home Affairs for not transferring the Chief Executives unless there are special reasons. But certain documents where lacking which were filed by the applicant in due course and then C.A. and R.A. were invited. On the other hand Sri O.P. Nigam and Bagesh Mishra challenged the same transfer order by filing O.A.No.485/2010 and O.A.No.486/2010 on 25.11.2010. These O.As. were listed before Hon'ble Member (J) on 26.11.2010 and an interim order was passed in both the cases. At the time of passing of an inter order reliance was also placed on the case of **Sarvesh Kumar Awasthi Vs. U.P:. Jal Nigam and Others reported in (2003) 11 SCC-740**. This S.L.P. (Civil) No.2523/2001 arising out of Writ Petition No.1557/2000 decided by Hon'ble High Court of Allahabad on 12.01.2001, has been finally disposed of on 22.11.2002, by Hon'ble Apex Court a copy whereof has been filed by learned counsel for the applicant in O.A.No.485/2010 and O.A.No.486/2010 and O.A.No.176/2011. Coming back to O.A.No.489/2010 the arguments were finally heard by the Division Bench of this CAT on 02.08.2011 and it was reserved for orders. Thereafter, it was found that in this O.A. in para-7 of the supplementary affidavit dated 01.12.2010, it was mentioned

that in O.A.No.485/2010 and O.A.No.486/2010 some interim orders have been passed which are pending before Single Judge. Therefore, we found it expedient that all the matters are clubbed together and may be decided by the Division Bench. Consequently, on 05.08.2011 all the aforesaid four O.As. were clubbed vide order dated 05.08.2011 in which the same transfer order has been impugned.

23. Now we come to O.A.No.485/2010. This O.A. has been filed for the following relief's:-

> "a. To quash the impugned Transfer Order dated 9.11.2010 passed by the Respondent No.3, as contained in Annexure A-1 to the O.A. so far it pertains to the applicant.
>
> b. to quash the impugned order dated 22.11.2010 passed by Respondent no.2 rejecting the representation of the applicant as contained in Annexure A-2 to the O.A.
>
> c. to direct the respondents to allow the applicants to continue at Lucknow on the post of Assistant with all attendant benefits and pay him regular salary from month to month.
>
> d. to pay the cost of this application."

24. The pleadings and the point of determination of this O.A. are similar to that of O.A.No.489/2010 except the additional claim of protection being sought in the above O.A. under the two O.Ms. in respect of not transferring Chief Executives of the Unions/ Associations registered and recognized under the J.C.M. Scheme. The learned counsel for the applicant placed reliance on the following case laws:-

(i). Vinod Shai Vs. Union of India and Others reported in (1996) 34 ATC-255---In this case, it was laid down that

mere statement in the order or in the counter affidavit that transfer is made in the interest of service, is not statement of fact but it is statement of inference. It was the duty of the opposite parties to place before this Tribunal the facts which led them to the conclusion that it was not in the interest of administration/public interest to retain the applicant at the particular place.

(ii). Somesh Tiwari Vs. union of India and Others reported in (2009) S SCC-592--- In this case it was held that an order in question would attract the principle of malice in law if it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground.

(iii). Sarvesh Kumar Awasthi Vs. U.P. Jal Nigam and Others reported in (2003) 11 SCC-740---This case law has also been referred in para-31 of the judgment of Dr. Krishna Chandra Dubey Vs. Union of India decided on 05.09.2005 by the Hon'ble High Court of Judicature at Allahabad which has been relied upon by the respondents. In the case of Sarvesh Kumar Awasthi, it has been laid done that the transfer of officials are required to be to be effected on the basis of set norms or guidelines. It is submitted by the learned counsel fro the applicant Sri A. Moin that in the present case in the absence of any transfer guidelines that said norms and Professed policy of longest stayees to go first should have been adhered. But on the contrary the longest stayees have been shown favour while the applicant has been transferred on pick and choose basis.

25. As the main pleadings and points of determination (except the protection of two O.Ms. in respect of not transferring the Chief Executives of the Registered and Recognized Union under J.C.M. Scheme) are similar to the aforesaid O.A.No.489/2010. The discussion made hereinabove in O.A.No.489/2010 and the findings arrived thereon apply in the present case also

26. Now we come to O.A.No.486/2010.

The following relief's have been sought in this O.A.:-

> "a. To quash the impugned Transfer Order dated 9.11.2010 passed by the Respondent No.3, as contained in Annexure A-1 to the O.A. so far it pertains to the applicant.
>
> b. to quash the impugned order dated 22.11.2010 passed by Respondent no.2 rejecting the representation of the applicant as contained in Annexure A-2 to the O.A.
>
> c. to direct the respondents to allow the applicants to continue at Lucknow on the post of Store Keeper (Technical) with all attendant benefits and pay him regular salary from month to month.
>
> d. to pay the cost of this application.
>
> e. Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."

27. In this O.A. also, the case of the applicant is that, there is no transfer policy governing the transfer of Group-III and IV employees of G.S.I. and therefore for the last 10 years the past practice followed by G.S.I. is for not transferring any Class-III and IV employees. He has no public dealing on his post. But his transfer has been made on the pretext of public interest. The longest stayees have been retained while he has

been picked up for transfer form Lucknow to Jammu. He is presently working as Storekeeper. According to him at least 9 persons who are longest stayees on the post of storekeeper (Annexure-A-4) have been retained and he has been transferred on pick a and choose basis. This issue was also raised by Recognized Union of G.S.I. vide letter dated 11.11.2010 but the same has fallen to deaf year of the respondents. No reliever has been posted in his place.

28. This O.A. has also been contested by filing counter affidavit on behalf of the Respondent No.1 to 3 saying that there are transfer guidelines dated 17.08.2010 in accordance with which the impugned transfer order has been made. But the names of longest stayees have not been controverted.

29. The applicant filed rejoinder affidavit, reiterating the pleadings contained in the O.A. and also saying that letter dated 16.08.2010 is not the transfer policy. It is only a proposed Transfer policy subject to approval of the Ministry of Mines and secondly it only pertains to sensitive posts whereas, the applicant does not hold any sensitive post. That the respondents have not come with clean hands. They have not indicated as to when said proposed transfer policy has been accepted and issued to all the staff.

30. The main pleadings and points of determination being similar to that of O.A.No.485/2010, there is no need to make discussion separately as all the O.As. have been clubbed and are being decided by a common judgment. The relevant findings

which have been already arrived at, will be applicable to this O.A. also

31. Now we come to O.A.No.176/2011.

This O.A. has been filed for the following relief's:-

> "a. To quash the impugned Transfer Order dated 9.11.2010 passed by the Respondent No.3, as contained in Annexure A-1 to the O.A. so far it pertains to the applicant.
>
> b. to direct the respondents to allow the applicant to continue at Lucknow on the post of Assistant with all attendant benefits and pay him regular salary from month to month.
>
> c. to pay the cost of this application.
>
> d. Any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed."

32. The case of this applicant is also that there is no transfer policy governing the Group-III and IV staff in G.S.I. Therefore, for the last 10 years any Group-III and IV employees has not been transferred. The applicant is said to has been transferred form Lucknow to Chandigarh in public interest. The applicant had specifically mentioned certain longest stayees (Annexure-A-7), who have not been touched and the applicant has been transferred on the basis of pick and choose policy. This pleading is uncontroverted. He moved an application for deferment of his transfer and vide order dated 30.11.2010 his transfer was deferred till 30.11.2010 (Annexure-A-3). Prior to the extended period coming to an end he again submitted a representation dated 21.01.2011 and his transfer was again deferred till 30.04.2011 vide order dated 2.2.2011 (Annexure-A-4). Lastly, he again moved a representation dated 08.04.2011 but the

same is still pending. The cut off date being 01.05.2011 of his deferment, when he could not receive any order he filed this O.A. on 27.4.2011. It is said that the longest stayees have been retained whereas he has been transferred arbitrarily. In this regard, he has mentioned names of 10 persons, who are longest stayees in his comparison (Annexure-A-5).

33. From the side of the respondents an application was given for taking C.A. on record but, it was opposed on the ground that the person, who has sworn it namely Sri K.P. Gautam, has no written authorization in is favour to swear the C.A. on behalf of the respondents. No such authorization could be brought on record by the respondents though several opportunities were granted on the request of the learned counsel for the respondents. Lastly Sri Pankaj Awasthi, the learned brief holder fairly conceded that in respect of this case there is no proper authorization. Therefore M.P.No.2129/2011 for taking C.A. on record was rejected vide detailed order dated 20.09.2011. Thereafter, case were listed on several dates but no fresh C.A. was filed. Thus there is no C.A. on record in this case and the pleadings of O.A. stand uncontroverted.

34. The learned counsel for applicant submitted that in the absence of any C.A. or specific denial, the pleadings contained in the O.A. should be construed to have been admitted and proved. It has been further submitted that otherwise also the claim of the applicant is almost similar, if not on better footing than the claim of the applicants in O.A.No.489/2010 and O.A.No.486/2010.

36. We find substance in the aforesaid arguments and therefore, there is no need to make discussion separately in this O.A. also.

37. In view of the discussion made hereinabove, we finally come to the conclusion that there is no transfer policy inexistence in respect of the employees/officials of GSI, who are not holding sensitive posts or are not posted at sensitive places. In such circumstances, the professed norms has to be that a person who served long at the same station should have been considered first for transfer. But on the contrary the longest stayees, have been spared/protected while the applicants have been transferred in an arbitrary manner. Neither the names of such longest stayees pleaded in O.As. have been controverted nor any reason could be given for doing so. The respondents have also not come with clean hands. They have unsuccessfully tried to justify the transfers in question on the pretext on alleged transfer policy dated 17.08.2010, which is non-existent. It appears to be merely a proposed policy for transfer and that too in respect of officials holding sensitive posts. All the applicants specifically pleaded that this transfer policy was never approved by appropriate authorities and it was never circulated or implemented. The respondents could not bring on record any thing to show that it was either approved or circulated/implemented. Otherwise also it is meant for officials holding sensitive posts whereas, all the applicants concededly did not hold any sensitive posts.

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38. Thus the act of the respondents appears to be arbitrary in transferring the applicants of all the O.As. It goes without saying that when an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article-14. Articles-14 and 16 strike the arbitrariness in State action and ensure fairness and equality of treatment. These Articles require that State action must be based on relevant principles applicable alike to all similarly situated and must not be guided by any extraneous or irrelevant consideration because that could be denial of equality. It is also well settled that in the matter of transfer such expression "Interest of Public Service" may not by itself justify the transfer particularly when it has been found to be contrary to the normal principle of longest stayees to go first and when there is no transfer guidelines. As mentioned above, the respondents have not come with clean hands in this case. They took the defence of transferring the applicants on the basis of non-existent transfer policy dated 17.08.2010 and as discussed in detail in later part of para-21 of the judgment there also appears 'malice in law'. The impugned transfers are therefore also bad in the eye of law on this ground because it was not based on any factor or material, germane for passing it. In addition to above, the impugned transfer order so far it relates to applicant nos.1 and 2 of O.A.N.489/2010, is also bad on account of it's being passed in contravention of O.Ms. dated 08.04.1969 and 19.08.1988 issued by DOPT and Ministry of Home Affairs for not transferring the Chief Executives of Registered and Recognized Union from

Headquarters except for special reasons and in the present case no such special reasons could be shown. It is therefore also against professed policy.

39. Accordingly, all the above O.As. are allowed. The impugned order dated 09.11.2010, so far it relates to the applicants of the above O.As. is set-aside alongwith the orders/letter dated 22.11.2010, 29.11.2010 of O.A.No.489/2010 and order dated 22.11.2010 of O.A.No.485/2010 and O.A.No.486/2010 by means of which the representations of some applicants have been rejected. No order as to costs.

Sd/-

(S.P. Singh)
Member (A)

Sd/-

(Justice Alok Kumar Singh) 12.10.11
Member (J)

Certified Copy
Rajeev 12/10/2011
Section Officer (Judicial)
Administrative Tribunal
Bench, Lucknow

Amit/-

12-10-2011

(i) Date of Order 12-10-2011
(ii) Date of [illegible]
(iii) Date of Receipt [illegible]