CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

Original Application No. 387/2011

This, the 12th day of January, 2012

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

Bhavana Singh aged about 42 years w/o Brig. V.K. Singh working as Chief Executive Officer and Defence Estate Officer, Lucknow Cantonment r/o 7- Kasturba Road, Cantonment, Lucknow

Applicant.

By Advocate: Sri I.B. Singh, Sr. Advocated assisted by Sri A.Moin

Versus

1. Union of India through Secretary, Ministry of Defence, Department of Defence Estates, Raksha Sampada Bhawan, Delhi Cantt, Delhi.
2. Director General, Defence Estate, Raksha Sampada Bhawan, Delhi Cantt, Delhi.
3. Additional Director General (Administration) Raksha Sampada Bhawan, Delhi Cantt, Delhi.
4. Principal Director, Defence Estae, Central Command, Lucknow.
5. Sri B.R. Shankar Babu, Joint Director, Directorate of Defence Estate, Central Command, Lucknow.

Respondents.

By Advocate: Sri R.C. Singh for respondents No.1 to 4
Sri Prashant Singh for respondent No.5

ORDER

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

This O.A. has been filed for the following reliefs:-

a) to quash the impugned order dated 19.9.2011 passed by respondent No. 2 as contained in Annexure A-1 to the OA. with all consequential benefits.

b) To direct the respondents to allow the applicant to continue as DEO Cantonment Lucknow, with all consequential benefits.

c) To pay the cost of this application,

d) Any other order which this Hon'ble Court deems just and proper.

2. The case of the applicant is that she was promoted to the post of Cantonment Executive Officer (hereinafter referred to as CEO) and was posted at Allahabad. From there, vide order dated 5.10.2010, she was transferred as CEO, Lucknow and was also given the additional charge of the post of DEO till further orders. All of sudden, an order dated 11.11.2010 was passed by respondent No.2 , transferring her as Joint Director, Defence Estates, Central Command, Lucknow. She moved a representation which was rejected. Therefore, she filed O.A. No. 472/2010, which was finally allowed on 20.4.2011, quashing the impugned transfer order as well as order rejecting her representation (Annexure A-5). This judgment has attained finality as no Writ Petition/ SLP filed. All of sudden, now an impugned order dated 19.9.2011 has been passed by respondent No.2 seeking to take away the additional charge of the post of DEO and vesting the same charge with respondent No.5 (Annexure A-1). This impugned order , according to the applicant amounts to circumventing and violating the above final order of this Tribunal dated 20.4.2011. It has been further said that out of 8 DEO circles , the charge at Allahabad, Bareilly, Danapur, Meerut and Mhow of the post of DEO is vested with the CEO and therefore, in gross discrimination against the applicant, the impugned order has been passed,. Further, it is said that the victimization of the applicant and also gross malice in law is apparent from the fact that despite the reviewing authority having graded the applicant Outstanding for the year 2010-11, the respondent No.2 has down graded the said entry as Very Good without affording any opportunity of hearing to the applicant.

3. The official respondents No. 1 to 4 have contested the O.A. by filing a counter affidavit saying that there is no illegality in the impugned order which has been made by way of an administrative arrangement and the applicant has no legal or vested right to hold the additional charge of the post of DEO. This additional charge is not a part of substantive charge of CEO. Further this additional charge was only till further orders as was mentioned in the earlier order dated 5.10.2010 when she was transferred from Allahabad to Lucknow. She did not agitate this aspect of assignment of additional charge of the post of DEO Lucknow till further orders. It has been further said that the applicant is making an attempt to extrapolate the ground of malice taken by her in O.A. No. 472/2010 as if it has an over arching effect in respect of any aspect of official functioning vis-à-vis the applicant. The factum of additional charge of DEO till further orders was not in contention in the above O.A. as such the question of its attaining finality of an kind does not arise. The impugned order has not been passed all of a sudden . It has been passed in the best interest of the Govt. and keeping in view the administrative exigencies and in public interest. In this connection, a letter dated 27.6.2011 written by respondent No.4 to respondent No.2 has also been brought on record wherein the request was made for posting regular DEO at Lucknow, Meerut, Allahabad and Bareilly (Annexure R-1). The judgment of this Tribunal dated 20.4.2011 did not afford prohibitive permanency to the applicant's tenure as CEO, Lucknow with additional charge of DEO, Lucknow. It is true that due to acute shortage of officers, number of officers have been holding dual charges of CEO and DEO. However, an effort is being made subject to availability of an offer to post additional officers wherever the officers are holding dual charges. Recently vide order dated 25.7.2011, an

officer has been posted as DEO, Meerut. Similarly one ADEO each has been posted at Allahabad, Meerut and Bareilly, to provide them administrative exigency. The impugned order is in effect in the same direction. Relief from additional charge is generally welcomed by officers but it is unusual that the applicant has termed it as victimization and discrimination. Regarding Annual Performance Appraisal Report (APAR) for the year 2010-11 (period from 7.10.2010 to 31.3.2011) it is said that it was sent to her vide letter dated 30.8.2011, which was received by her on 1.9.2011. In view of the guidelines issued by O.M. dated 14.5.2009, a representation against any entry in the APAR has to be made within 15 days. She was afforded the above opportunity. If she was aggrieved about down grading her APAR, she should have represented to the competent authority but she has not made any representation and thereby accepted the APAR. Therefore, she has no locus or ground to agitate with regard to her APAR after forfeiting the opportunity of administrative remedy which was available to her. Therefore, the charge of malice against respondent No.2 is unfounded and misconceived. No prejudice has been caused to the applicant as there is no loss of status, emoluments or seniority. Any change of station is also not involved. The applicant has also submitted a representation to DGDE vide letter dated 20.9.2011 which was received in D.G. Secretariat on 24.10.2011 (Annexure R-3). As the matter was already sub-judice before this Tribunal, no decision has been taken on the said representation.

4. A separate C.A. has also been filed on behalf of respondent No. 5 mostly reiterating the same averments as contained in the C.A. of the official respondents.

5. The applicant has filed Rejoinder Reply, denying the averments made in the Counter Affidavit, and reiterating the most of the averments made in the O.A.

6. Heard learned counsel for the parties and perused the material on record. Written arguments have also been filed in this case on behalf of both the sides which we have carefully gone through..

7. Before entering into the merits of the case, it is expedient to consider the case laws which have been relied upon by the rival parties:-

The case laws cited on behalf of the applicant:-

i) ***Writ Petition No.1501 of 1973 (S.R. Bhagwat and others Vs. State of Mysore*** (paras 8,9,11,12,13 and 20)

In para 12, it has been laid down that a binding judicial pronouncement between the parties cannot be made effective with aid of any legislative power.

ii) ***Writ Petition No.5620 of 2010 (S/S) (Sanjeev Sinha Vs. State of U.P. and others*** (Para 2 and 4)

On the basis of a complaint , the petitioner was attached to DUDA, Raibareli, That order was challenged in writ petition No. 3912 (S/S) of 2010 in which the High Court stayed his attachment. Thereafter, again the petitioner was transferred vide transfer order dated 30.7.2010, which was impugned in this writ petition, saying that this is a malafide action and opposite party No.4 is adversely inclined against the petitioner and it is on her behest that earlier he was attached and now he has been transferred again.

In para 4, the Hon'ble court observed that be that as it may, the Court is not entering into the allegations of bias at the moment but it was found that when vide order dated 10.6.2010, the attachment of the petitioner from Kanpur to Raibareli was

stayed by the High Court, it was expected that the executive will have some respect for the judicial order and such orders of transfer/attachment at least for the session have to be honoured. It was also observed that the allegation of the petitioner that the transfer has been made in order to circumvent the order of this Court, gathers weight. Consequently the order was stayed till the end of the session with an observation that the opposite parties shall be at liberty to consider the case of the petitioner for transfer in the exigency of work. With these observations, the petition was finally disposed of.

iii) ***(2005) 6 SCC-636 (P.V. Mahadevan Vs. M.D.T.N. Housing Board*** (paras 8 to 12)

In this case, there was an inordinate delay of 10 years in initiating the departmental enquiry. Therefore, the charge memo was quashed and the departmental enquiry was put to an end. Further, the appellant was held entitled to all retiral benefits.

iv. **(2008)18 LCD 102, 7 (Mrs. Pramila Rawat Vs. District Judge, Lucknow)** Para 12- In this case the relevant provision of financial handbook pertaining to Maternity leave on full pay was examined and it was held that it applies to all female government employees working either as permanent, temporary or adhoc employee. It was also held that the incumbent was entitled to continue on the post till regular selection is made. In para 11 , it has been further emphasized that the law is well settled that adhoc employee cannot be replaced by appointing another adhoc employee.

v. **(2008) 13 Supreme Court Cases 506 , Municipal Corporation, Ludhiana Vs. Inderjit Singh and Another** (para 14)- In para 14, it has been said that the appellant acted arbitrarily in so far as it demolished the structures, despite pendency of the suit.

vi. **Writ Petition No. 1171/2008 , Dinesh Kumar Manjhi Vs. State of Jharkhand and others** (para 8 &11):- Under challenge in this writ petition was a notification whereby the order of the petitioner's transfer issued earlier vide another notification to a particular place was cancelled and he was transferred to another place in the capacity of Sub Divisional Agricultural Officer (General). The quashing of the notification was sought by means of which he was directed to continue as Sub Divisional Agriculture Officer at the place in addition to his substantive post at Koderma in the same capacity. In para 8, some facts of the case have been described. In para 11, it has been observed that where a Government officer assumes charge of office unilaterally, the same cannot be ipso facto acknowledged unless accepted and ratified by the concerned authorities of the department.

vii. **Narendra Kumar Singh Gaur Vs. Union of India and others 1998(1) UPLBEC 536** (paras 14,15,16,36,43,45)-In the paragraphs upon which reliance has been placed, the matter of interim relief has been discussed. There is no such stage now in the case in hand before us.

viii. **(2009) 2 Supreme Court Cases , Somesh Tiwari Vs. Union of India and others** (paras 16 and 17):- In this case, after discussing the scope and grounds for judicial review, it was found that the transfer order has been passed in malafide exercise of power and it is punitive transfer without application of mind to the relevant facts. It was also held that if an employee has been transferred on the basis of non-existent facts, then it was a malice in law.

ix. **(2010) 9 Supreme Court Cases 437 , Kalabharti Advertising Vs. Hemant Vimalnath Narichania and others** (paras 25,26)- In this case, expression legal malice or malice in

law were explained and the nature and form of malice which is attributed to that State has been restated. The relevant paragraph 25 and 26 are as under:-

"25. The State is under obligation to act fairly without ill will or malice- in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts ."

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

(No Right to hold additional charge)

i) **Writ Petition No. 7859 of 2001 (S. Maliachamy Vs. Lt. Governor and others decided on 19.2.2002** Paras 1,10,15 and 30:- A serving IAS officer , Sri S. Malaichamy, was already holding the post of Managing Director, Delhi Khadi and Village Industries Board, was given the additional charge of the Election Commissioner for the National Capital Territory of Delhi till further order, in terms of Notification dated 12.1.2011.Thereafter, on 13.12.2001 the Lt. Governor issued an order by which one Sri M.P. Tyagi , a retired IAS officer was appointed as Election Commissioner for Delhi and assignment of

the petitioner to hold the additional charge of Election Commissioner was brought to an end .

Para 15- In the absence of challenge on the ground of mala fides, the matter is to be considered in a very limited compass as to whether an assignment of additional charge until further orders, being contrary to the letter and spirit of Section 7 of the D.M.C. Act and to the constitutional provisions as contained in parts IX and IXA of the Constitution of India and also contrary to the un-amended Rules, as were applicable at that time, can be read down to be deemed to be a substantive appointment as an Election Commissioner for a period of three years (which is the tenure prescribed under the rules).

Para 30- There is another aspect also which to our mind is crucial, namely, the conduct. Sri S. Maliachamy did not agitate the aspect of assignment of the additional charge till further orders , as given to him by Annexure P.1. He accepted the same and has now come forward by filing this petition only when the appointment of Sri Tyagi was made and also when his own service as an officer in the IAS has reached the verge of superannuation. This fact coupled with the fact that Sri S. Malaichamy continued to discharge his duties and draw remuneration as the Managing Director of Khadi and Village Industries Board additionally. This goes to show that he himself considered it to be an additional charge of Election Commissioner and not an appointment to the office of Election Commissioner. He is thus, by conduct, precluded from claiming a right to get his tenure converted into a full three years appointment on a substantive basis as an Election Commissioner for

National Capital Territory of Delhi with effect from 12.1.2001."

ii) **AIR 1996 Supreme Court Cases 326, Dr. J.N. Nanavalikar Vs. Municipal Corporation of Delhi and another** (paragraphs , 10,11,17 and 21)- In paragraphs, 10 and 11, the arguments advanced from the rival sides have been mentioned while discussion and findings contained in paragraphs 17 and 21 are as under:-

"After giving our anxious consideration to the facts and circumstances of the case, the materials on record and the respective submissions of the learned counsel for the parties, it appears to us that there is no specific cadre post a Medical Superintendent of the hospital under the administration of Delhi Municipal Corporation. It is the positive case of the respondent Corporation that senior most specialist Grade I in a hospital is given the additional charge of Medical Superintendent of the Hospital. Such doctor in specialist grade I performs his regular duties as specialist Grade I and also performs additional administrative duties as Medical Superintendent . Since post of Medical Superintendent is neither a separate cadre post nor the same is a promotional post, the concerned doctor remains in his own scale of pay as Grade I put for discharging additional duties as Medical Superintendent, he gets a special monthly allowance of Rs. 200/- The integrated seniority list in the cadre of specialist Grade I remains unaffected by the assignment of the responsibility and duties of Medical Superintendent on the Specialist Grade I. A senior most Specialist Grade I in a hospital even when made Medical Superintendent of that hospital carries his own scale of pay and his seniority

position as Specialist Grade I . Precisely for the said reasons, the appellant Banavalikar, by virtue of his being senior most specialist Grade I of RBTB Hospital when Dr. Bagchi, the then Medical Superintendent of the said hospital had retired was made Medical Superintendent of the said hospital in 1989 although in the integrated seniority list of specialist Grade I he happened to be junior to many including the respondent No.2 Dr. Patnaik. In the letter appointing him as Medical Superintendent of RBTB Hospital, it was specifically mentioned that he would continue in his own scale of the specialists. It is a fact that until appointment of Dr. Patnaik as Medical Superintendent of RBTB hospital in 1994, the appellant and the other predecessors in office of the Medical Superintendent of RBTB Hospital were specialists in tuberculosis and chest diseases. But the fact remains that all the said specialists in tuberculosis and chest diseases holding the post of Medical Superintendent of RBTB Hospital happened to be the senior most doctors in the said hospital. The appellant has contended that in RBTB Hospital which is not a general hospital but a special hospital meant for treating patients suffering from tuberculosis and chest diseases, the concerned authorities consciously and intentionally appointed a specialists in tuberculosis and chest diseases as Medical Superintendent of the said hospital, because such specialist is best suited for the post of Medical Superintendent in the said hospital. Such contention of the appellant has been seriously disputed by the respondents and according to the Municipal Corporation of Delhi, the function of the Medical Superintendent is

purely administrative in nature and as such it is immaterial if the Medical Superintendent of RBTB Hospital does not possess any specialization in tuberculosis and chest diseases. The contention of the respondent-Corporation is that factum that the appellant and his predecessors in office of Medical Superintendent of RBTB Hospital were specialists in tuberculosis and chest diseases, was just in coincidence. The appellant has failed to produce any material to show that there had been any policy decision to select only a specialist in tuberculosis and chest disease as Medical Superintendent of RBTB Hospital. The perception of the appellant and that of respondent – Corporation as to impelling necessity to select a specialist in tuberculosis and chest diseases as Medical Superintendent of RBTB Hospital are entirely different and in the absence of any rule or policy decision of the concerned authorities, the appellant cannot insist on appointment of a specialist in chest diseases as Medical Superintendent of RBTB Hospital by way of implementation of a policy. In the absence of any rule or administrative policy decision election of Medical Superintendent of the hospital under the Corporation remains a prerogative of the Corporation. We may also indicate that efficiency of a doctor in discharging the function of the Medical Superintendent will depend more on his administrative capability than on his skill and specialization in a particular stream of medical science."

In this case, the point for consideration were taken up in view of Article 14 and Article 226 of Constitution of India. A doctor specialist in certain hospital under control of Delhi

Corporation relieved of additional charge given to him of the post of Medical Superintendent. This action was challenged on the ground of arbitrariness by claiming that Medical Superintendent of the hospital has to be a specialist in Tuberculosis and chest diseases. This post was not a promotional post. The Hon'ble Apex Court found that in absence of any rule or policy decision, selection of Medical Superintendent of hospitals remains a prerogative of the corporation. It was also found that the doctor who was allegedly favoured was not impleaded and therefore, the plea of passing alleged mala-fide order cannot be sustained.

iii) **AIR 1993 Supreme Court 2273 , State of Haryana Vs.S.M. Sharma and others** (paras 9 and 11):- In this case ,one S.M.Sharma was employed as Sub Divisional Officer in the service of the Haryana State Agricultural Marketing Board. The Chief Administrator of the Board by order dated 13 June, 1991entrusted Sharma with the current duty charge of the post of Executive Engineer. Later on by the order dated January 6,1992, the Chief Administrator withdrew the said current duty charge from Sharma and transferred him to Bhiwani. Sri Sharma challenged the order before the Hon'ble High Court by way of a writ petition, which was allowed. An appeal was filed by the State of Haryana. Both the paragraphs , upon which the reliance has been placed i.e. 9 and 11 are as under:-

> "9. It is only a posting order in respect of two officers. With the posting of Ram Niwas as Executive Engineer Sharma was automatically relieved of the current duty charge of the post of Executive Engineer. Sharma was neither appointed/promoted /posted as Executive Engineer nor was he ever reverted from the said post. He was only holding current duty charge of the post of Executive Engineer. The Chief Administrator never

promoted Sharma to the post of Executive Engineer and as such the question of his reversion from the said post did not arise. Under the circumstances the controversy whether the powers of the Board to appoint/promote a person to the post of an Executive Engineer were delegated to the Chairman or to the Chief Administrator, is wholly irrelevant."

"11. We are constrained to say that the High Court extended its extra ordinary jurisdiction under Article 226 of the Constitution of India to a frivolity. No one has a right to ask for or stick to a current duty charge. The impugned order did not cause any financial loss or prejudice of any kind to Sharma. He had no cause to action whatsoever to invoke the writ jurisdiction of the High Court. It was a patent misuse of the process of the Court."

(Right only to hold substantive post)

iv) **Judgment dated 19.1.1956 of Punjab and Haryana High Court (Union of India Vs. Purshotatam Lal Dhingra**) (paras 6 and 8):- In para 6, it has been laid down that the fundamental rules applicable to Govt. servants generally and the Railway Fundamental Rules applicable to Railway Servants make it quite clear that a person holding a post in a substantive capacity has, and a person holding a post in an officiating capacity has not , a clear legal right to occupy the post. Therefore, in para 8, it has been observed that Dhingra was holding the post of an Assistant Superintendent in a officiating capacity , was unprotected by any statute or statutory rule from being transferred to a lower post or even from being reverted to his substantive post..

(Meaning of malice in law)

v) **2005 AIR SCW 5676 (Punjab State Electricity Board Vs. Zora Singh)** (para 39):- In Smt. S.R. Venkataram Vs. Union of India, AIR 1979 SC 49:)1979) 2 SCC 491 this Court observed:- "It is not therefore the case of the appellant that there was actual malicious intention on the part of the Govt. in making the alleged wrongful order of her premature retirement so as to amount to malice in fact. Malice in law is however quite different. Viscount Haldane described it as follows in Shearer vs. Shields:-

> "A person who inflicts an inquiry upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know that law, and he must act within the law. He may, therefore, be guilty of malice in law, although so far the State of his mind is concerned, he acts ignorantly, and in that sense innocently.

Thus, malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause."

In ***State of A.P. and others Vs. Goverdhanlal Pitti (2003) 4 SCC 739***, this court observed :-

> "12. "Legal malice " or "malice in law" means something done with out lawful excuse." In other words, " it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others." (See words and phrases Legally Defined, 3rd Edn. London Butterworths, 1989).

vi) **2007 AIR SCE 740 , West Bengal State Electricity Board Vs Dilip Kumar Ray** (Para 14)

"14. Malice and Malicious Prosecution as stated in the Advanced Law of Lexicon 3rd Edition by P.Ramanatha, Aiyar read as follows:-

"Malice- Unlawful intent

Will; intent to commit and unlawful act or cause harm, express or actual malice is ill-will or spite towards the plaintiff or any indirect or improper motive in the defendant's mind at the time of the publication which is this sole or dominant motive for publishing the words complained of. This must be distinguished from legal malice or malice in law which means publication without lawful excuse and does not depend upon the defendant's state of mind.

The intent, without justification or excuse, to commit a wrongful act II. Reckless disegard of the law or of a person's legal rights. Ill-will : wickedness of heart. This sense is most typical in non legal contexts."

"Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore, serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious and this legal usage has etymology in its favour. The Latin militia means badness, physical or moral- wickedness in disposition or in conduct- not specially or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose; design , intent or motive. But intent is of two kinds, being either immediate or ulterior the ulterior intent being commonly distinguished as the motive. The term malice is

applied in law to both these forms of intent, and the result is a some what puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean one of the two distinct things. We mean either that it is done intentionally , or that it is done with some wrongful motive."

"Malice" in the legal sense imports (1) the absence of all elements of justification, excuse or recognized mitigation and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wantoh and willful doing of an act with awareness of a plain and strong likelihood that such harm may result.

The Model penal Code does not use 'malice ' because those who formulated the code had a blind prejudice against the word. This is very regrettable because it represents a useful concept despite some unfortunate language employed at times in the effort to express it."

"Malice " in the legal acceptance of the word is not confined to personal spite against individuals but consists in a conscious violation of the law to the prejudice of another. In its legal sense, it means a wrongful act done intentionally without just cause or excuse.

"Malice" , in its legal sense, dos not necessarily signily ill-will towards a particular individual , but denotes that condition of mind which is manifested by the intentional doing of a wrongful act without t just cause or excuse. Therefore, the law implies malice where one deliberately injures another in an unlawful manner.

Malice means an indirect wrong motive.

"Malice" in its legal sense means, malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.

Malice , in ordinary common paralance, means ill-will against a person and in legal sense, a wrongful act done intentionally, without just cause or reason.

It is a question of motive, intention or state of mind and may be defined as any corrupt or wrong motive or personal spite or ill-will.

"Malice " in common law or acceptance means ill will against a person, but in legal sense, it means a wrongful act alone intentionally without just cause or excuse.

It signifies an intentional doing of a wrongful act without just cause or excuse or an action determined by an improper motive.

"MALICE" , in a common acceptation , means , ill-will against a person; but in its legal sense, it means a wrongful act done intentionally without just cause or excuse.

Malice in its common acceptation, is a term involving stint intent of the mind and heard, including the will; and has been said to mean a bad mind; ill-will against a person; a wicked or evil state of the mind towards another ; an evil intent or wish or design to vex or annoy another; a willful intent to do a wrongful act; a wish to vex annoy or injure another person or as intent to do a wrongful act; a condition of the mind which shows a heart regardless of social duty and fatally bent on mischief.

vii) **AIR 2002 SC 1314 , First Land Acquisition Collector and others Vs. Nirodhi Prakash Ganguli)** (para 5):- This case deals with alleged malafide execution.

9. The compilation filed on behalf of the respondents from Sl. No. viii to xviii deal with the condition /consideration for interim relief which is not relevant now, as this case is being decided on merit now.

10. Besides more case laws have also been relied upon from the side of the respondents which have been enclosed along with their written arguments:-

viii) ***Thammanna Vs. K.Veera Reddy and others reported in (1980) 4 Supreme Court Cases 62*** (paras 15 to 17).

> "16. Although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless , normally, " a person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something." As per James, L.J. , in Re-Sidebothem referred to by this Court in Bar Council of Maharashtra Vs. M.V. Dabbolkar and F.A. Desai Vs. Roshan Kumar.
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> 17. In the face of the stark facts of the case, detailed above, it is not possible to say that the appellant was aggrieved or prejudicially affected by the decision of the High Court, dismissing the election petition."

ix) ***State of Punjab Vs. JOginder Singh Dhati reported in AIR 1993 Supreme Court 2486*** :- In this case it was held that transfer of a public servant is entirely for employer to decide

when, where and at what point of time a public servant is to be transferred. A court ordinarily should not interfere.

x) ***State of U.P. and others Vs. Gobardhan Lal reported in 2004 AIR SCW 2082*** (paragraphs 8 and 9)

> "8. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an out come of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/ servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also

be interfered with, as they do not confer any legally enforceable rights , unless as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

xi) ***Rajendra Singh etc. Vs. State of U.P. and others reported in 2009 AIR SCW 7461*** (paras 9 and 10):-

"9. It is difficult to fathom why the High Court went into the comparative conduct and integrity of the petitioner and respondent No.5 while dealing with a transfer matter. The High Court should have appreciated the true extent or scrutiny into a matter of transfer and the limited scope of judicial review. Respondent No.5 being a Sub-Registrar, it is for the State Govt. or for that matter Inspector General of Registration, to decide about his place of posting . As to at what place respondent No.5 should be posted is an exclusive prerogative of the State Govt. and in exercise of

that prerogative, respondent No. 5 was transferred from Napur II to Ghaziabad IV keeping in view administrative exigencies.

10. We are painted to observe that the High Court seriously erred in deciding as to whether respondent No.5 was a competent person to be posted at Ghaziabad IV as Sub Registrar. The exercise undertaken by the High Court did not fall within its domain and was rather uncalled for . We are unable to approve the direction issued to the State Govt. and Inspector General or Registration to transfer a competent officer at Ghaziabad IV as Sub Registrar after holding that respondent No.5 cannot be said to be an officer having a better conduct and integrity in comparison to the petitioner justifying his posting at Ghaziabad IV. The High Court entered into an arena which did not belong to it and thereby committed serious error of law. The only question required to be seen was whether transfer of respondent No.5 was actuated with male fides or other wise in violation of statutory rules. The transfer of respondent No.5 was not found to suffer from any of these vices. The High Court went into the competence and suitability of respondent No.5 for such posting. It is here that the High Court fell into a grave error. As a matter of fact, the impugned order of the High Court casts stigma in the service of respondent No.5 which may also act prejudicial to his interest in the pending appeal against the adverse remarks."

11. In this O.A., written arguments have also been filed from both the sides. The rival submissions both oral as written are as under:-

12. It has been submitted on behalf of the applicant that the impugned order dated 19.9.2011 has been passed to circumvent the final judgment of this Tribunal dated 20.4.2011 passed in O.A. No. 472/2010 by means of which order dated 11.11.2010 was quashed and the initial order dated 5.10.2010 was revived with which the applicant was working as CEO with additional charge of DEO, Lucknow. The back ground facts in short are that the earlier by means of order dated 5.10.2010, the applicant was transferred from Allahabad while working at Allahabad as CEO with additional charge of DEO to Lucknow and the applicant joined at Lucknow. Subsequently, by means of order dated 11.11.2010, she was transferred as Joint Director, Defence Estate. It was this order which was challenged in the aforesaid O.A. No. 472/2010 mainly on the ground of malice in law and it having been without authority. It was decided in favour of the present applicant in April, 2011.

13. The second limb of arguments is that the malice in law continued even after the aforesaid judgment of this Tribunal which has already attained finality because no writ or appeal has been filed. In this regard an instance of down grading the Annual remarks of the applicant has been quoted saying that she was graded as Outstanding in the ACR for 2010-2011 by reporting authority as well as reviewing authority. But the respondent No. 2 down graded her entry to Very Good on the ground that certain issues regarding decisions of the Cantonment Board as pointed out in the Directorate of Defence Estate, Lucknow letter dated 21.2.2011 remained un-answered. It is further said that this letter was not addressed to the applicant. It was sent by Principal Director, Defence Estate, asking the President Cantonment Board (PCB) to submit a report. The President, Cantonment Board asked the applicant to submit a report by means of his letter

dated 23.2.2011. In compliance thereof, she submitted a detailed report on 25.3.2011 to the President , Cantonment Board. In the Counter Affidavit/ Objection filed by the respondents , it comes out that various letters were sent by the Director , Defence Estates starting from 11.3.2011 right upto 9.9.2011 asking the President, Cantonment Board to submit the report in pursuance to the letter dated 21.2.2011. In this regard, the submission is that none of the said reminders were ever endorsed to the applicant. Further, it has been pointed out that as mentioned in the said C.A./ objection itself, the report of the applicant has been sent by the PCB to the Central Command (but not to the Principal Director, Defence Estate) on 23.4.2011 i.e. almost 4 months prior to the down grading of entry. As a second instance of malice , it is said that by means of notice dated 3.6.2011 and 2.6.2011, the respondent No. 2 has asked the applicant to submit her explanation pertaining to weeding out of the records at Cantonment Board, Bareilly in the year 1999 and change of date of birth of two employees. In this regard, it was submitted that the law is settled on the point that old and belated matter cannot be raked up. These matters are about 12 years old which are being taken up without explaining the delay. The third instance of malice is said to be reduction of budget allocation of Cantonment Board, Lucknow. Earlier, the Cantonment Board , Lucknow was allocated about 10 crores each year but this year only 5.31 crores have been allocated while Kanpur Cantonment Board has been allocated Rs. 10 crores approximately. The reasons are said to be too fold. The first being the lesser budget to the Lucknow Cantonment Board so that the applicant may not function effectively and at the same time more service charges have been allotted to the CEO, Kanpur Sri N.V.Satyanarayana who had done effective pairavi

against the applicant in the aforesaid O.A. No. 472/2010 and has also filed affidavit in that O.A. Similarly, it is said that Merrut, Dehradun and Agra Cantonment Board have been sanctioned more than 50% of their demands vis -a –vis 38% of the current demand to Lucknow Cantonment Board. Yet another instance of malice in law on the part of the respondent No.2 is said to be giving of additional charge of DEO to respondent No.5 who is a junior to the applicant. The argument is that an adhoc employee cannot be replaced by another adhoc employee. The same analogy would apply in the present case that one person having additional charge cannot be replaced by another person, having given additional charge.

14. Further it is said that from the patent haste in which the charge was sought to be assumed by respondent No.5 is also an instance of malice in law. This O.A. was filed on 20.9.2011 and a mention was made to the Hon'ble Tribunal for taking up the matter on the same date. But the Hon'ble Tribunal consented for 21.9.2011. On that date, an alleged charge report was produced on behalf of respondent No.5, whereas the applicant has not handed over the additional charge of the post of DEO ,as the matter was sub-judice. Attention was also drawn towards Govt. of India's order dated 11.5.1998 (Annexure SA-9) at page 18 of M.P. N. 2476/2011 which gives in detail for handing over and taking over the charge of the post of DEO. It has to be completed by the relieving officer and signed by both the officers. Similarly, it also provides for joint verification / test check to be carried out by both the officers. In this regard, Financial Rules (GFR), 2095 , Rule 195 and 255 were also referred. According to applicant, these mandatory provisions have not been followed. Further, it has been said that no reasons have been assigned by the respondent No. 2 as to why

the charge of the applicant of the post of DEO was sought to be taken away whereas the CEO, Allahabad who is also holding additional charge of DEO had requested by means of his letter dated 24.6.2011 to send a regular DEO on account of heavy work load. It is said that such request was conveniently ignored and no regular DEO has been sent to Allahabad.

15. In respect of irreparable loss and injury, it is said that the act of entrustment of charge of DEO to a junior officer as an additional charge tends to indicate as if there are various insinuation and complaint against the applicant. Applicant working as DEO and therefore, it is an attempt to malign and destroy the reputation of the applicant.

16. From the side of the official respondents it has been replied that firstly nowhere it has been said on behalf of the applicant that through the impugned order dated 19.9.2011, any legal or vested right of the applicant has been affected in any way or there is any loss of emoluments , status or there is any inconvenience caused to her. As such , she is not an aggrieved person, in the back drop of the preposition of law laid down in the case of Thammanna (supra).

17. Further, it has been said that the judgment and order dated 20.4.2011 n O.A. No. 472/2010 did not afford prohibitory permanency to the applicant 's tenure as CEO , Lucknow with additional charge of DEO, Lucknow. The applicant cannot claim any right, whatsoever, on the basis of above order to hold two posts i.e. CEO , Lucknow and DEO, Lucknow as regular charge. There is no such observation or findings in the aforesaid judgment in favour of the applicant. The applicant cannot convert the additional charge till further orders into a permanent or substantive charge on the ground of passing of the aforesaid judgment. Moreover, right to hold the additional charge was not

the subject matter of the aforesaid O.A. In respect of the contention, that no body has a right to hold additional charge, reference has been made to the case laws of S.Maliachamy (supra), Dr. J.N. Banavalikar (supra) , State of Haryana Vs. S.M.Sharma and others (supra) and Union of India Vs. Purshottam Lai Dhingra (supra) etc.

18. In reply to the arguments on the point of malice in law, it has been said that all that has been done through the impugned order is to entrust to respondent No.5 , through an administrative arrangement the additional charge of DEO, thereby relieving the applicant of that additional charge. This administrative arrangement has been made on administrative ground and in public interest. In respect of alleged down grading of entry in the APAR, it has been submitted that the reason for down grading has been mentioned by respondent No.2 in the APAR. It was communicated to the applicant vide letter dated 30.8.2011 which was received by her on 1.9.2011 but she did not prefer any representation against it within the prescribed period of 15 days nor even cared to seek further time. Thus, she has forfeited her right to represent with reference to the contents and grading of her ACR for the period from 7.10.2010 to 31.3.2011. Therefore, this grievance and allegation has been manufactured by her as an after thought on receiving the impugned order dated 19.9.2011. Thought the applicant claims to have submitted her reply to the PCB on25.3.2011 in respect to the Directorate's letter dated 21.2.2011, but it could not come to the knowledge of respondent No.2 as the PCB had sent the reply to the Chief of Staff, Headquarters, Central Command, Lucknow instead of Principal Director, Defence Estates, Central Command, Lucknow , for the reasons not known to the respondents. Its copy along with the

comments of the applicant reached the respondent No.4 only on 24.9.2011 after a lapse of 7 months whereas the remarks of the respondent No. 2 were endorsed in the APAR of the applicant on 21.8.2011. Therefore, no inference of any malice can be drawn from down grading of the APAR of the applicant by the respondent No.2.

19. In respect of Bareilly instance, it has been said that events might have been taken place in the year 1999 or thereabout, but the alleged irregularities came to the notice only when the then CEO, Bareilly brought it to the notice of the Directorate , Defence Estates in December, 2010. The tenure of the applicant at Bareilly was from 8.9.1999 to 6.6.2005.

20. It has been conceded that due to acute shortage of officers, several officers were holding dual charges of CEO and DEO. But there is neither any practice nor rule to give the additional charge of DEO to CEO.

21. It is said that if there are only two posts of Indian Defence Estate Services (IDES) in a cantonment, namely CEO and DEO and when one of these falls vacant , the charge of that vacant post is usually given to other officer. But in a cantonment like Lucknow , where there are many EDES officers available, the charge can be given to any eligible officer like it has been done in the instant case. In the similar manner in the Chandigarh, the Dy. Director is holding the additional charge of DEO. As far as the contention of giving charge to a junior officer , it is said that the applicant as well as Sri B.R. Shankar Babu, respondent No.5, both are placed presently in the Junior Administrative Grade and are equally eligible to hold the post of DEO, Lucknow. Some more illustrations were also given in this regard, saying that present CEO , Agra is a 1993 batch officer whereas the present DEO ,Agra Circle is 1997 batch. Similarly, present CEO,

Meerut is 1996 batch officer while the present DEO , Meerut is 1998 batch officer. Similarly, present CEO, Delhi is 1996 batch officer whereas the present DEO , Delhi is 1997 batch officer. It was also pointed out that the applicant herself has done a tenure of DEO, Lucknow from 14.6.2005 to 17.6.2008 and during that period , CEO, Lucknow was Sri P. Danial, an officer of 1989 batch whereas the applicant is a 1993 batch officer. It has also been said that both , Lucknow and Allahabad requires separate DEOs. But the posting of officer is done subject to availability and keeping various administrative factors in view. The applicant cannot demand that his additional charge cannot be taken away after or till the additional charge of CEO, Allahabad Cant is taken away.

22. Regarding reduction of allocation of budget, it has been said on behalf of the official respondents that Kanpur has a total demand of Rs. 1051305361 whereas it got only Rs. 107228918. In comparison to this, Lucknow has a total demand of Rs. 451523169 only. The other boards also had bigger or comparable claim vis-à-vis Lucknow which can be demonstrated as below:-

Sl.No.	**Station**	**current demand**	**Total Demand (including arrears)**	**Amount allotted**
i.	Kanpur	20,03,76,363	105,13,05,361	10,72,28,918
ii.	Meerut	20,18,95,657	183,76,40,375	11,17,96,483
iii	Mhow	14,54,88,798	89,92,58,257	5,60,74,191
iv.	Dehradun	9,50,37,062	54,59,51,661	6,97,48,118
v.	Agra	7,37,47,237	22,46,80,211	5,84,23,609
vi.	Lucknow	13,78,98,519	45,15,23,169	5,31,48,751

23. On the basis of the above chart, it was tried to be explained that other boards except Agra got more service charges because they had higher total demand as compared to Lucknow. Not only that, Dehradun and Meerut have also to meet expenses for survey of their cantonments in this year. It was further submitted that the applicant is unnecessarily finding

fault with the allotment of service charges, which was made as per availability of funds, comparative demands of Cantonment Boards and their current financial condition.

24. It was further submitted on behalf of the official respondents that since the applicant has no right to hold the additional charge , hence the impugned order cannot be challenged on the alleged ground of malice in law. In support of this contention, reference has been made to the case of Punjab State Electricity Board Vs. Zora Singh (supra), West Bengal State Electricity Board Vs. Dilip Kumar Ray (supra) and First Land Acquisition Collector and others Vs. Nirodhi Prakash Ganguli (supra).

25. As regards the alleged haste in assuming the charge, it has been submitted on behalf of the official respondents that respondent No.5 assumed charge at 9.15 a.m. on 21.9.2011 and not on 20.9.2011 as alleged by the applicant. Respondent No. 5 has to assume the charge of the post of DEO Lucknow Circle since the impugned order dated 19.9.2011 requires its implementation with immediate effect. This charge was assumed ex-parte, since the applicant showed neither any inclination nor willingness to hand over the charge .Simply, if the charge certificate is not filled in the alleged prescribed form, no ill intention or illegality can be attributed to the assumption of charge by the respondent No.5.. Moreover, the alleged prescribed form relates to handing over / taking over charge of permanent transfer and not in the case of transfer of charge as an administrative arrangement when both the officers continue to be in the same station.

26. Divesting an officer of additional charge to another officer neither harms the reputation of the applicant nor does it cast any aspersion on her competence.

27. In respect of contention of the applicant that adhoc arrangement cannot be replaced by another adhoc arrangement, it has been submitted on behalf of the official respondents that the administrative arrangement with regard to holding of additional charge cannot be equated with adhoc appointment or adhoc arrangement. In an adhoc arrangement , the person takes charge exclusively and not in addition to his own charge. Moreover, an employee cannot claim any right to clinch to hold additional charge of any other post and it is the sole domain of an employer to utilize the services of an officer wherever the administration or public interest, so requires. In this respect, the attention of the Tribunal was drawn towards a decision rendered by the Hon'ble Apex Court in the case of State of Punjab Vs. Joginder Singh (supra), State of U.P. and others Vs. Gobardhan Lal (supra) , Rajendra Singh Vs. State of U.P. (supra).

28. It has been also submitted that the Charge Assumption Certificate (CAC) issued by respondent No. 5 has since been accepted by all the authorities concerned i.e. Principal Controller of Defence Accounts, Central Command as well as SBI, where the public account of the office of DEO is maintained.

29. It has also been submitted that the sanctioned strength of IDES is 189 whereas the current strength is 119 only. Similarly, the sanctioned strength at JAG level to which both the applicant and respondent No.5 belong is 65, whereas the current strength is 55.

30. In respect of alleged down grading of the entry, it has been submitted that her reply dated 25.3.2011 submitted to the PCB did not reach the respondent No.4 or respondent No. 2 till 24.9.2011. Even after communication of APAR to the applicant, she did not inform / represent to respondent No.2 that she has

already submitted reply to the Directorate's letter dated 21.2.2011 on25.3.2011 and without this information, respondent No. 2 had no reason to review the remarks entered by him in the said APAR.

31. In reply, it has been submitted on behalf of the applicant that too many co-incidences itself give rise to suspicion. In this regard, he referred to alleged shortage of officers, down grading of entry and calling for explanation in respect of Bareilly matters etc.

32. In respect of the applicant being aggrieved person, it has been replied that the OA. is very much maintainable u/s 19 of the AT Act against the order dated 19.9.2011 as per the definition of order in the explanation clause. Section 19 provides that a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance. In reply to the case of Thammanna (supra) , it has been said that it pertains to an election dispute which is distinguishable on its own facts and therefore, not applicable here. Refuting the explanation given in respect of budget allocation, it has been argued that the percentage of budget / amount allotted to Cantonments vis-à-vis their current demand clarifies the position of discrimination. In this regard the following chart indicating the percentage has been given on behalf of the applicant:-

Cantonment Station	% of Amount allotted vis-à-vis amount Demanded.
Kanpur	53.5%
Meerut	55.35%
Mhow	38.5%
Dehradun	79.24%
Agra	79.24%
Lucknow	38.53%

33. In respect of circumventing the judgment of this Tribunal, reference was made to the case of Dinesh Kumar Manjhi (supra) and ***Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and another reported in AIR 1975, Supreme Court 2299 para 427*** as reproduced in para 2 (x) of the written arguments at page 12.

34 In reply to the aforesaid chart indicating percentage of allocation of budget, from the side of the official respondents, the following chart has been submitted:-

Sl.No.	Station	Total Demand (including arrears)	Amount allotted	%age
i.	Kanpur	105,13,05,361	10,72,28.918	10.2
ii.	Meerut	183,76,40,375	11,17,96,483	6.08
iii	Mhow	89,92,58,257	5,60,74,191	6.23
iv.	Dehradun	54,59,51,661	6,97,48,118	12.77
v.	Agra	22,46,80,211	5,84,23,609	26
vi.	Lucknow	45,13,23,169	5,31,48,751	11.77

35. It has been submitted that as would be apparent from perusal of the aforesaid chart, the Lucknow Cantonment Board has been allocated a higher percentage of amount than Kanpur, Meerut and Mhow.

36. Having considered the rival submissions as mentioned hereinabove, now, we proceed to record our findings on all the relevant points as under:-

37. At the out set it is worthwhile to mention here that the impugned order is in an administrative arrangement as mentioned in the caption of the impugned order itself and it has been passed on administrative grounds and in public interest with the approval of the competent authority (Director General Defence Estates). By means of this administrative arrangement, only additional charge of DEO, Lucknow circle, which the applicant was holding till further orders has been directed to be handed over from the applicant (who is holding a substantive charge of the post of CEO, Lucknow) to respondent No.5, who is

working as Joint Director, Directorate of Defence Estates, Central Command, Lucknow. It is also relevant to note here that the applicant who is working as CEO, Lucknow was holding this additional charge of DEO, Lucknow only till further orders. It will not be out of place to mention that even a transfer order can not be interfered with unless the same is shown to be an out come of malafide exercise of power or violative of any statutory provision or passed by authority not competent to do so. The law is settled on this point and there are catena of decisions of Hon'ble Apex Court , which need not to be mentioned here. It is also a settled law that a Govt. servant holding a transferable post has no legal or vested right to remain posted at one place or the other and if he is transferred by a competent authority, then it does not violate any of his legal rights. The impugned order is an administrative arrangement between two officers of Indian Defence Estate Services (IDES) posted in the same station i.e. Lucknow. Concededly, the applicant in addition to her own duties of CEO was holding additional charge (akin to officiating charge) of DEO, Lucknow only till further orders and now respondent No.5 has been directed to hold this additional charge. Therefore, the para-meters which are applicable in the cases of transfer cannot be applied here and even if the same are applied, there is no pleading that either the order is violative of any statutory provision or passed by authority not competent to do so. There is also no such pleading that any legal or vested right of the applicant has been affected in any way or there is any loss of emoluments , status or there is any inconvenience caused to her. Broadly speaking the impugned order appears to has been challenged only on the grounds that it has been passed to circumvent the judgment /order of this Tribunal dated 20.4.2011

in O.A. No.472/2010 and that it is an out come of malafide exercise of power (malice in law).

38. As far as the O.A. No.472/2010 is concerned, it was decided by this Tribunal in favour of the applicant on 20.4.2011. The copy of the judgment/ order (Annexure A-5) shows that it was filed for quashing the transfer order dated 11.11.2010 passed by officiating DGDE by means of which the applicant was transferred from the post of CEO, Lucknow Cantonment to the post of Joint Director, Defence Estates, Lucknow. It is true that at that time, in addition to her duties of CEO, she was also holding the additional charge of DEO till further orders. But the sole emphasis was in respect of the post of CEO, Lucknow Cantt Board which she was holding substantively, as would be apparent form the plain reading of this judgment. From para 2 of the said judgment, it comes out that the main emphasis was on the point that the normal tenure of CEO is about 3 years while she has completed only 5 weeks at Lucknow and secondly, that the order has been passed by officiating DGDE who was not competent authority within the definition of DGDE given in the Cantonment Act, 2006 and lastly, on the ground of malice in law. It is true that this order dated 20.4.2011 has attained finality because no judicial review / appeal has been filed. After a gap of about five months, the present impugned order has been passed taking away only the additional charge which the applicant was holding till further orders.

39. As far as the alleged circumventing of the above judgment and order dated 20.4.2011 (supra) of this Tribunal is concerned, the impugned transfer order dated 11.11.2010 of that O.A. was set aside mainly on the ground of malice and its having been passed by officiating DGDE, who was not found to be competent authority and also on the ground of its being

violative of G.O. dated 5.9.83 issued by Govt. of India ,Ministry of Defence, prescribing the term of posting as CEO as about 3 years and also on the ground of its being against the professed policy . But that does not mean that any prohibitory permanency was accorded in favour of the applicant, particularly to hold the additional charge of DEO, Lucknow, which she was holding only till further orders. On the basis of that judgment, the applicant cannot claim to hold two posts i.e. CEO Lucknow and DEO, Lucknow on regular basis. There is also no such observation or findings or any direction in the aforesaid judgment. An additional charge till further orders cannot be construed or converted into a permanent or substantive charge and that too on the basis of the said judgment. As per preposition of law laid down in the cases of S. Maliachamy (supra), Dr. J.N. Banavalikar (supra) , State of Haryana Vs. S.M. Sharma and others (supra) and Union of Idia Vs. Purshottam Lal Dhingra (supra), (as discussed hereinbefore) no body has a vested right to hold additional charge. Therefore, we regret for deciding this point against the applicant.

40. Now , we come to the point of alleged malice in law. The first instance is said to be that father of the applicant sent a letter dated 28.5.2011 to the Hon'ble Minister of State for Defence detailing the harassment of the applicant by respondent No. 2 and the mental torcher being given by the respondent for which no reply has been given so far, and a false averment has been made in the counter affidavit that the said representation has already been decided on25.11.2011 which is date in the future. In reply to this, it has been submitted that this letter by applicant's father , was addressed to Hon'ble Minister of State for Defence. Therefore, respondent No.2 cannot be expected to response to

this letter which is not addressed to him. This reply has substance.

41. Another instance is said to be down grading of APAR of the applicant. The reason of down grading from Outstanding to Very Good has been mentioned by respondent No.2 in the APAR (7-10-2010 to 31.3.2011) itself. The perusal of electrostat copy of this APAR shows that the period shown by the applicant and also by the reviewing authority was from 1.4.2010 to 10.3.2011 which was corrected by respondent no.2, the accepting authority as 7.10.2010 to 31.3.2011. Further, he wrote that while the officer is competent in execution of her duties, her performance appears to have been assessed liberally by the reporting /reviewing authority as most of the actions are at the proposal stage. Further, certain substantive issues regarding decisions of the Board as pointed out in the Dte DE, CC, Lucknow letter no. 33018/BP/Lucknow/11/LC-9 dated 21.2.2011 remained unanswered. Hence she was assessed as Very Good. This down gradeed entry was recorded on 21.8.2011. It was concededly communicated to the applicant vide letter dated 30.8.2011, which was received by the applicant on 1.9.2011. As stated by the respondent, the applicant had not preferred any representation against it within the prescribed period of 15 days and further stated that she has not even sought further time. It may be mentioned here that tentative hierarchy/ channel for the purpose of this case is as under:-

DGDE - Accepting Officer
↓
Principal Director - Reviewing Officer
↓
President Cantonment Board – Reporting Officer
↓
CEO - Initiating Officer

42. It was also elaborated by the learned counsel for the respondents that DGDE had asked the Principal Director to

examine the matter vide his letter dated 10.12.2010. In turn , the Principal Director wrote the above letter dated 21.2.2011 to the PCB and endorsed its copy to the DGDE for information. When he did not receive any reply, he also sent several reminders to the President, Cantonment Board (PCB) but no reply could be received by the Principal Director or the DGDE who ultimately recorded the entry on 21.8.2011. In this regard, it is also relevant to note that the applicant claims to have submitted her reply to the President Cantonment Board (PCB) on 25.3.2011 well within the period covered by said APAR in respect to the Directorate's aforesaid letter dated 21.2.2011. But the PCB sent her reply to Chief of Staff Headquarter , Central Command, Lucknow who had no concern whatsoever in this regard because the author of the letter was not the Chief of Staff Headquarter, Central Command, Lucknow. The reply/ comments ought to have been sent to Principal Director of Defence Estates, Central Command, Lucknow. But for the reasons best known to the PCB, it was not sent to him. He did not even think that such type of lapse on his part may entail loss to his subordinate i.e. the applicant to whom he himself has assessed as an outstanding officer. Even copy of her comments was not endorsed to the respondent No.4 i.e. Principal Director for information. It was only on 24.9.2011, i.e. after a lapse of about 6-7 months, that its copy along with the comments of the applicant were sent by the PCB to the respondent No.4, whereas the aforesaid down grading of remarks was already made on 21.8.2011. During course of arguments, the learned counsel for the respondents emphatically pointed out that this Tribunal should refrain itself from examining the issue in deep regarding APAR as no such relief has been claimed by the applicant in this O.A. Accordingly, this Tribunal kept itself confined only to the extent as to whether or not any

alleged malice can be inferred from the factum of down grading the APAR from "outstanding" to "very good" by respondent No.2, the Accepting Authority. As far as such inference is concerned, in view of the above it cannot be drawn at this stage.

43. Another instance in respect of malice is in respect of seeking explanation from the applicant pertaining to wrong weeding while posted as CEO, Bareilly. It is said that this matter is of the year 1999 and after a lapse of about 12 years, it is being raked up, without explaining any delay. From the side of the respondents , it has been submitted that the applicant remained posted there upto June, 2005.The irregularities came to the notice when another CEO, Bareilly brought it to the notice of the Directorate , Defence Estate in December, 2010. Those proceedings are not direct subject matter of this O.A. Therefore, we are not expressing any final opinion on this point. It is true that if there are too many co-incidences as said by the applicant , then a doubt arises but on the basis of suspicion or doubt , no inference can be drawn particularly in respect of serious allegation of malice unless it is specifically and satisfactorily substantiated.

44. The next instance of malice is said to be curtailment of budget allotment in favour of Lucknow Cantonment Bard. First of all, though the CEO is an important authority in the Cantonment Board but there are also elected members and the Board which is headed by a senior responsible officer of the rank of Major General GOC, Lucknow sub Area. It is a statutory body. Therefore, merely on the ground of less allocation of budget (if at all it is so) personal malice or malice in law against the applicant cannot be inferred , particularly when two charts given demonstrated from the side of the respondents in reply to the charts/figures quoted by the applicant as mentioned

hereinbefore, do not demonstrate any comparatively lesser budget allocation in favour of Lucknow. Particularly, in respect of Kanpur Cantonment Board, the respondents have satisfactorily explained that Kanpur had a total demand of Rs .1051305361 whereas it got only 107228918. In comparison to this , Lucknw had a total demand of Rs. 451523169 only against which it got Rs.531,48751/-. The other boards also had bigger or comparable claim vis-à-vis Lucknow as mentioned in the said chart submitted by the respondents. From one of the chart, it has been tried to explain that other Boards except Agra got more service charges because they had higher total demand as compared to Lucknow. Not only that, Dehradun and Meerut had also to meet expenses for survey of their cantonments in this year. It has been also explained that allotment of service charges are made as per availability of funds , comparative demands of Cantonment Boards and their current financial condition. Thereafter, the applicant came out with a figure in percentage of the amount allocated vis-a –vis demanded but that too has been controverted by the respondents by giving not only percentage but also actual figures, as demonstrated in one of the charts mentioned hereinbefore. During course of arguments, the learned counsel for official respondents informed that a task force is also looking into all these aspects. We, therefore without expressing any final opinion on this point, regret in not finding any substance in this regard also.

45. Yet another instance of malice , according to applicant, on the part of the respondent No.2 , is that the additional charge of DEO has been sought to be given by means of impugned order to respondent No.5 who is junior to the applicant in as much as the applicant is of 1993 batch while the respondent No. 5 is of 1998 batch. In reply to this averment, it has been said from the

other side that if there are only two posts of Indian Defence Estate Services (IDES) in a cantonment , namely CEO and DEO and when one of these falls vacant , the charge of that vacant post is usually given to other officer. But in a Cantonment like, Lucknow, where there are many IDES officers available, the charge can be given to any eligible officer like it has been done in the instant case. It is further added that in the similar manner, in the Chandigarh, the Dy. Director is holding the additional charge of DEO. As far as, the contention of giving charge to a junior officer, it has been convincingly pointed out that both the applicant as well as the respondent No. 5 are placed presently in the Junior Administrative Grade and are equally eligible to hold the post of DEO, Lucknow. Some more illustrations have also been given in this regard in respect of CEO and DEO, Agra, Meerut and Delhi. Moreover, it was also pointed out that earlier the applicant herself has done a tenure of DEO , Lucknow from 14.6.2005 to 17.6.2008 and during that period , CEO, Lucknow was Sri P. Danial , an officer of 1989 batch whereas the applicant is of 1993 batch officer . Therefore, this point is also devoid of any substance.

46. It was also submitted on behalf of the applicant that according to preposition of law, an adhoc employee cannot be replaced by another adhoc employee and in the instant case therefore, one person having additional charge cannot be replaced by another person to be given additional charge and as such this also reflected patent malice in law, on the part of respondent No.2. In this regard, reliance was also placed on the case of Mrs. Pramila Rawat Vs. District Judge (supra). In our opinion, an administrative arrangement with regard to holding of additional charge cannot be equated with adhoc appointment or adhoc arrangement . It has been rightly said on behalf of the

respondents that in an adhoc arrangement, a person takes charge exclusively and not in addition to his own charge. Moreover, an employee cannot claim any right to clinch to hold additional charge of any other post and it is the sole domain of an employer to utilize the services of an officer wherever the administration or public interest , so requires. In support of this contention, reliance was placed in the case of State of Punjab Vs. Joginder Singh (supra), State of U.P. and others Vs. Gobardhan Lal (supra) and Rajendra Singh Vs. State of U.P. (supra), which have been discussed earlier.

47. In respect to another submissions made on behalf of the applicant, it was submitted on behalf of the respondents and rightly so that divesting an officer of additional charge neither harms the reputation of the applicant nor does it cast any aspersion on his/her competence unless it is specifically so established.

48. Another instance of malice in law to which the attention of this Tribunal was drawn on behalf of the applicant is the haste in which the assumption of charge was given to respondent No.5. It is said that the O.A. was filed on 20.9.2011 with the request to take up the matter on the same day but the Hon'ble Tribunal consented for the next date i.e. on 21.9.2011. On that date, an alleged charge report was produced saying that charge has already been assumed ex-parte. It was also said that there is no handing over/ taking over charge in accordance with the prescribed proforma. The charge is said to has been assumed at 9.15 a.m. on21.9.2011. It is pointed out on behalf of the respondents that the order dated 19.9.2011 itself requires its implementation with immediate effect. Further, it was said that the charge was assumed ex-parte because the applicant showed neither any inclination nor willingness to hand over the

charge and simply because the charge certificate was not filled in the alleged prescribed form, and merely on this ground , no ill intention or illegality can be attributed to the assumption of charge of respondent no.5. It was further pointed out that those alleged prescribed form relates to handing over/ taking over charge of permanent transfer and not in the case of transfer of charge as an administrative arrangement when both the officers continue to be in the same station. It has also been emphasized on behalf of the respondents that the charge assumption certificate issued by respondent No. 5 has since been accepted by all the authorities concerned, including Principal Controller of Defence Accounts, Central Command, Lucknow as well as SBI, where the public account of the office of DEO is maintained. Be that as it may. There is no need now to add any thing more in this regard.

49. Further, it has been submitted on behalf of the applicant that no reason has been assigned by the respondents as to why the charge of the post of DEO was sought to be taken away whereas the CEO , Allahabad , who is also holding additional charge of DEO, Allahabad had requested by means of his letter dated 24.6.2011 to send a regular DEO on account of their being heavy work load. From the other side, it has been explained that sanctioned strength of IDES is 189 whereas the current strength is 119 only. Similarly, the sanctioned strength at JAG level is 65 whereas the current strength is 55 only. It is true that Lucknow and Allahabad require separate DEOs but the posting of officer is done subject to availability and keeping various administrative factors in view. But the applicant cannot demand that his additional charge cannot be taken away after or till the additional charge of CEO, Allahabad Cant is taken away.

50. In view of the discussions made hereinabove, this O.A. deserves to be dismissed and accordingly, it is so ordered. No order as to costs.

(S.P.Singh)
Member (A)

(Justice Alok Kumar Singh)
Member (J)

HLS/-