

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A

DATE OF DECISION : 9 -SEPT-1996.

O.A.NO.: 316/96

KISHORE KUNAL.

: APPLICANT.

Vrs.

UNION OF INDIA & ORS.

: RESPONDENTS.

COUNSEL FOR THE APPLICANT.

: SHRI VINOD KANTH.

COUNSEL FOR THE RESPONDENTS.
NO. 1, 2 & 5.

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ADVOCATE GENERAL.

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C O R A M

HON'BLE MR. N.K.VERMA, MEMBER [ADMINISTRATIVE]

O R D E R

HON'BLE MR. N.K.VERMA, MEMBER [A]:

In this O.A. I have before me an agitation which falls in the grey area of administrative law and natural justice. There are catena of judgments of Hon'ble Supreme Court that the Tribunal's cannot interfere through judicial review of orders of transfer unless a transfer order is malafide or is made in violation of statutory provisions.

2. The applicant in this O.A. came before me with an agitation on 05.07.1996 that he was transferred telegraphically on the 2nd July, 1996, as Inspector General [for short, IG] of the Central Industrial Security Force [for short, CISF], Mumbai, from the post

of IG, CISF, Eastern Zone, Patna. The applicant was promoted and posted as IG, CISF, Patna only in January, 1996, for a tenure of three years which would expire in 1999. But, he was abruptly transferred because of personal malice and political vendetta on the part of Shri Mohd. Taslimuddin, the then Minister of State of Home Affairs [for short, MOS(H)] and under the influence of Shri Laloo Prasad Yadav, Chief Minister of Bihar and National President of Janta Dal. After hearing the learned counsel for the applicant, Shri Srinath Singh, who also prayed for an interim relief by staying the operation of impugned order, I desired to have detailed submissions and replies from the respondents on both the substantive relief claimed in the O.A. as well as the interim relief prayed for. However, to meet the ends of justice I also directed the respondents not to take any precipitate action to have the applicant relieve of the charge of the office at Patna in his present post.

3. The brief facts of the case are that Shri Kishore Kunal, the applicant in this O.A., is an Indian Police Service officer [for short, IPS], Gujarat Cadre, 1972, posted as IG, CISF at Patna since 15.01.1996. Prior to this post of IG, he was working as the DIG, CISF at Patna w.e.f. 01.05.1991. In the normal course his tenure as DIG would have expired on 07.10.1995 but he was granted extension of tenure by the Appointment Committee of the Cabinet [for short, ACC] till he assumed charge of the newly created post of IG, CISF, Eastern Zone, Patna in January, 1996. On being promoted as IG, CISF, as per Tenure Rules he was to have an additional tenure of three years w.e.f, the

date of taking over charge upto January, 1999. This approval of the ACC was conveyed to the DG, CISF, New Delhi, vide orders dt. 12th January, 1996, in the following terms :

"Sub.: Promotion of Shri Kishore Kunal, IPS[GJ:72], DIG, CISF as IG, CISF.

Sir,

I am directed to convey the approval of the Central Govt. to the promotion of Shri Kishore Kunal, IPS [GJ:72], DIG, CISF as IG, CISF in the pay scale of Rs.5900-6700 for a period of three years from the date of assumption of charge of the post or until further orders, whichever is earlier....."

Consequent upon this Shri Kishore Kunal took over as IG, CISF at Patna on 15th January, 1996. The applicant has been posted in Bihar earlier to this spell as the DIG, CISF in several capacities during the period of July, 1984 to June, 1991, but for very brief spells. He was in the Patna Office of the Directorate General of Industrial Contingency in the Ministry of Industry from 02.08.1985 to 14.04.1986 and again in the Bharat Wagon and Engineering Ltd., Patna, from 26.12.1986 to 30.04.1987. During this intervening periods the applicant had spent in Compulsory Waiting and then reverted back to his parent cadre in Gujarat in January, 1988 and had served there in other capacities and remained on the Cadre strength of that Govt.

3.1 The applicant had been desirous of serving in the State of Bihar as per his personal inclination, Bihar being his home State and had been serving in this State on deputation from his parent cadre of Gujarat from time to time since 1978. During the course

of his stay at Patna he was nominated as the Trustee of the Mahavir Mandir as a nominee of the Govt. of Bihar in November, 1987, and had been working thereon in his spare time outside his official hours of duty without any dis-advantage to the Govt. After he joined Patna as the IG, CISF in a fresh tenure of three years, it was normally expected that he would continue till the end of his deputation tenure in 1999. However, within six months of his joining the post of IG, CISF at Patna, he was transferred on the malafide and extraneous factors at the behest of the new MOS[H] who had joined Union Council of Ministers on 2nd June, 1996, under the influence of Respondent no.4, Shri Laloo Pd. Yadav. Immediately, after joining that office Shri Taslimuddin directed the officers of the Ministry of Home Affairs [for short, MHA] for processing the repatriation of the applicant from Patna to his parent cadre in Gujarat. On 04.06.1996, the Director [Police] in the Ministry, Shri N.K.Sinha put up a note stating that the MOS[H], Shri Taslimuddin has felt that the applicant be repatriated back to his parent cadre since the officer is spending considerable time in running the Mahavir Mandir Trust and in other religious activities. MOS[H] had also mentioned that the official's conduct during the Assembly Election held in Bihar and recently conducted Lok-Sabha Election in the country had not been beyond reproach. Director[PL] brought to the notice that the applicant was on deputation from State of Gujarat to Bihar from 18.08.1978 to 12.07.1984. His present spell of Central deputation is since 08.10.1990 when he joined as OSD to the then MOS[H] and from where he was subsequently posted as DIG, CISF, N.E.Zone, Patna on

01.05.1991. Thereafter, the applicant was granted extension of tenure as the DIG till he became IG in January, 1996 and his tenure would be upto January, 1999. In para-3 of his note the Director[P] mentioned that an IPS Officer is required to become a Trustee of any Private Trust after obtaining permission of the concerned State. He, however, mentioned that readily available records in the Ministry did not indicate any permission having been granted to him since he had joined CISF on 01.05.1991. However, it was possible that he would have sought permission from the concerned State Govt. prior to that date which would require verification from the concerned State Govt. The Officer/CISF could throw light on this aspect as also the question of his involvement in various religious activities. In para-4 of the said note, the officer's conduct in the Assembly Election and Lok-Sabha Election was clarified that there were no complaints regarding his malafide or mis-conduct. In the concluding para, the Director [P] sought instructions if reports may be called for from the officer concerned/State Govt./CISF/IB, as per para-3 above or his premature repatriation considered. He also pointed out that for premature repatriation, approval of the ACC would be required. The file was thereafter sent to the Joint Secretary [Police] [for short, JS[P]], Shri Anurag Goel, who has recorded as follows :

"This was discussed with SS[ISP]/HS after MOS[H] had spoken to me. I have also thereafter discussed this with DG, CISF. He spoke highly of Shri Kunal's professional competence. He also said that nothing adverse has come to his notice in

connection with CPMF deployment for elections, as far as Shri Kunal is concerned and in fact for the General Elections, 1996. Shri Kunal was not at all involved in the election arrangements. DG, CISF suggested that if the officer is to be shifted out of Patna, he could be posted as IG, CISF in Mumbai, as the post has fallen vacant on 02.06.1996 on the reversion of Shri Shingari from this post on completion of his tenure [such a transfer would not require ACC approval]. However, DG, CISF suggested that the professional record of the officer may be kept in view while taking a decision [service profile of Shri Kunal has been summarised at Flag 'A']"

The above note would indicate that the then MOS[H], Shri Taslimuddin had separately spoken to the JSP who had further discussed this matter with the Special Secretary [Internal Security Police] [for short, SS[ISP]] before putting up the note as reproduced above. SS[ISP] has recorded that the transfer of the office out of Patna could be considered and posted as IG, CISF, Mumbai, and he marked the file to the Home Secretary. Home Secretary recorded the following recommendations thereon :

"I have carefully gone through these papers. Shri Kishore Kunal has got a consistently outstanding record. However, it is not desirable that an officer should continue at one place for a long time. Record shows that though he belongs to Gujarat Cadre he has been in Bihar from 1978 onwards and in Patna from April, 1983 onwards except for a short period of six months when he was OSD to the then MOS[H]. I, therefore, suggest that he should be posted as IG, CISF in Mumbai."

Thereafter, the file went to Shri Mohd. Taslimuddin, the then MOS[H]. The orders of the MOS[H] in Hindi can be transcribed as follows :

"In view of the above facts it is necessary that an enquiry should be made regarding Shri Kunal's membership of the Mahavir Mandir Trust at Patna and whether he had obtained the permission of the Govt. in this regard or not. Shri Kunal should be transferred to Mumbai Hqrs. immediately. Simultaneously, process should be initiated for reversion of Shri Kunal in view of the fact that he has been out of his parent Cadre for a very long period."

After this, the file went to the Prime Minister's Office who also looked after the work of Home portfolio. On behalf of the Prime Minister/Home Minister, the following observations were recorded :

"[i] PM has approved the transfer and posting of Shri Kunal as IG, CISF in Mumbai.

[ii] PM has also approved that MHA may initiate an enquiry into whether Shri Kunal had obtained the necessary permission of the Govt. under the AIS Conduct Rules to become a Trustee of a Private Trust."

The file was received back by the Home Secretary on 24.06.1996 who marked it down to the JS(P) for doing the needful immediately. The JS(P) marked the file at once to Director [P] and the orders regarding his transfer to Mumbai were issued through a confidential memo dated 26.06.1996 endorsed to the DG, CISF. The telegraphic order, dated 2nd July, 1996, was the culmination of all these processes.

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4. The applicant in his O.A. has alleged that it was Shri Taslimuddin's very first action as the MOS[H] on the day of his joining. The pressure on the officers of the MHA was ~~so~~ great that the JS[P], Shri Anurag Goel telephoned the DG, CISF, who was at Hyderabad for obtaining his verbal proposal for the transfer. In spite of the DG's rating the applicant as an outstanding officer, he agreed to transfer the applicant to Mumbai rather than to repatriate him to Gujarat. The DG further pointed out that the outstanding work of the officer should be taken into account before arriving at any decision. The SS[ISP] & HS, Shri K. Padmanabhaiah did the rest by recommending the transfer of the applicant to Mumbai and in so doing, Shri Padmanabhaiah, HS made a mis-leading observation under the political pressure of Shri Mohd. Taslimuddin, the then MOS[H] and Shri Laloo Pd. Yadav, National President of the ruling Janta Dal, who had summoned the HS to meet them in the new Bihar Sadan on 02.06.1996 [Sunday], where he was directed to transfer the applicant from Patna. Shri Padmanabhaiah while recommending his posting to Mumbai had stated that the applicant has been in Bihar since, 1978 and in Patna since April, 1983, excepting a brief period when he was the OSD in the MHA and the officer should not continue at one place for a long period and in view thereof the applicant should be transferred to Mumbai. This observation was totally false in view of the fact that the applicant was posted for about one year in Patna in the span of 7 years between July, 1984 and June, 1991. There were other officers in the CISF who had not been working in their parent cadre ^{for} as long as 15 years and the applicant was singled out for this

transfer under the pressure of Shri Mohd. Taslimuddin. Shri Taslimuddin himself on 12.06.1996 passed the order for transferring him to Mumbai on extraneous considerations and malice as also for enquiry in regard to his working in the Temple. Besides, he reiterated his earlier directions about repatriating the applicant to Gujarat. This order was endorsed by the Home Minister-cum-Prime Minister with the modification that repatriation process was not permitted to be initiated.

5. The malafides and arbitrariness of this transfer could be assessed by the very fact that the post of IG, CISF, Mumbai had fallen vacant on 03.06.1996 and the DG, CISF, vide his order dt. 03.05.1996 had directed the IG, Calcutta, Shri Ajay Prasad to hold the additional charge of the office of the IG, Mumbai. Thus, the orders for the applicant's posting emanated from the Minister and the Ministry and not from the DG, CISF, who is supposed to be initiating such proposals. It was only on 10.05.1993 that the Ministry had passed an order for posting or transfer of the officers of the rank of IG level and above in the Central Para Military Forces [for short, CPMF]. The CPMF concerned may furnish the information, as in the attached proforma for obtaining the approval to the proposed posting or transfer of the officer concerned. The applicant stated that never in the history of the Ministry a senior officer of an IG rank has been ordered to be "kicked out of the place of posting unceremoniously on the first day of joining the office." Shri Taslimuddin had been inducted into the Ministry on the 2nd June, 1996, and was given the

portfolio of MOS[H] on the 3rd June, 1996.

6. The applicant has made the statement that he had fallen foul of the Janta Dal President who is also the Chief Minister of Bihar, because of the massive rigging in the Patna Parliamentary Constituency. The Election Commission cancelled polls in two segments of the Parliamentary Constituency and Danapur Assembly Constituency. On the day of repoll, CISF was the only CPMF deployed for conducting repoll and wherever they were deployed on polling booths as static force, the CISF personnel did not allow bogus voting and rigging the poll. As a result, the Assembly seat of Danapur was lost by the Janta Dal and in the Patna West segment of Patna Parliamentary Constituency, Janta Dal lagged behind by a margin of over 30,000 votes. The Chief Minister of Bihar and the Janta Dal President, Shri Laloo Pd. Yadav in a Press statement blamed the CISF for the defeat and alleged that the CISF at the instance of a senior officer did not allow his voters to exercise franchise. Shri Ram Kirpal Yadav, who won the Patna Parliamentary Constituency, because of his massive riggings in other segments on 7th May, 1996, also accused the applicant of partisan role. The Janta Dal activists thereafter were demanding the transfer of the applicant because his force had ensured the fair poll on the day of repoll in two segments of Patna Parliamentary Constituency. The applicant himself on the day of repoll was at Delhi in a meeting. He clarified his role by a suo-motu enquiry into the allegations of the Chief Minister by a Sr. Commandant of Force on which the DIG, CISF, has also given his comments. In regard to the Assembly Election

of Chapra in 1995, the CISF and the CPMFs were not utilised and the applicant through a Fax Message highlighted this matter to the IG [Law & Order] of Bihar Police, who was the Chief Co-ordinator of the CPMF. On this report, the Chief Minister, Shri Laloo Pd. Yadav had directed his Home Commissioner, Shri D.P.Maheshwari to write to the Govt. of India for the transfer of the applicant from Patna. The Home Commissioner, Shri Maheshwari wrote to the JS[P] in MHA, Shri Anurag Goel on 08.05.1995 saying, "State Govt. therefore, recommends that Shri Kishore Kunal should be immediately recalled from Bihar." An enquiry was held on the reports of the applicant and the Home Commissioner, Bihar, and as a result thereof, the attempt of Shri Laloo Pd. Yadav, to have him transferred failed. At the behest of Shri Laloo Pd. Yadav, an MP from Chapra, Shri Lal Babu Rai, complained to the Prime Minister and the Home Minister for the applicant's transfer which again was enquired into and the applicant's stand was vindicated. When Shri Mohd. Taslimuddin directed the applicant's transfer on the two charges of his involvement in the Mahavir Mandir as also his partisan role in the Assembly Election in Bihar in 1995 and Lok Sabha Election in 1996, there was nothing against the applicant in the Ministry's file. Thus, the applicant's transfer was totally arbitrary and borne out of political vendetta and malice.

6.1 The applicant also brought to notice that he was empanelled for promotion to the rank of IG in 1995 and he was made to wait for the posting as IG since the post at Patna was created only in October, 1995, for which his name was recommended and he was

subsequently appointed in January, 1996, as IG, CISF. The officers of the MHA with Shri K. Padmanabhaiah as HS [respondent no.5], were instrumental in the creation of the post at Patna and the applicant's posting at Patna. It was the HS, Shri Padmanabhaiah, who had, at the complaints made by Shri Lal Babu Rai, an MP from Chapra and the Home Commissioner of Bihar, got the matter enquired into and found nothing against the officer. Suddenly, he had changed his stance and recommended the applicant's transfer in June, 1996, apparently due to pressure of malice and political vendetta of both Shri Laloo Prasad Yadav and Shri Taslimuddin. This political vendetta and malice can be borne out from the fact that Shri Laloo Pd. Yadav made a public statement which was telecast on the DD Network in which Shri Laloo Pd. Yadav is alleged to have made statement that the applicant should be sent to jail and should be kicked out of service after "KAAN PAKAR KAR" [pulled by the ears].

6.2 The applicant had a brilliant and outstanding career throughout and he was actively associated with the Ayodhya Affairs for the last five years. The applicant was appointed as the OSD, Ayodhya during the time when Shri Chandrashekhar was the Prime Minister and also during the premiership of Shri Narsimha Rao. The applicant states that he is an Honorary Secretary of Shri Mahavir Sthan Nyas Samiti, a temple trust created by the order and notification of Bihar State Board of Religious Trusts and after having informed the Govt. of Gujarat he accepted the responsibility. Gujarat Govt. granted him two years study leave to do a research work on "Criminal Law in

Ancient India" in Sanskrit department of Patna University and to facilitate him to carry out the activities of the Nyas Samiti. This Secretariship of Shri Mahavir Sthan Nyas Samiti [for short, SMSNS] is not carried out at the cost of his official duties but during his spare time. There is nothing unusual about his Honorary Secretary of a Private Trust when the Govt. of Bihar itself had appointed a Dy. Commissioner, Deoghar as the sole Trustee of the Baidyanath Temple and the D.M., Patna as ex-officio President of the Patna Hanuman Temple Trust.

6.3 The applicant had indicated in his O.A. that he is prepared to take Voluntary Retirement from the Govt. service prematurely for which he has sought permission. He does not want to serve in a situation where a person with a criminal nexus and antecedents becomes the MOS[H] and where a person, who allowed the plundering of the treasuries of Bihar to the tune of hundreds of crores of rupees and was engaged in systematic rigging of elections, dictates the terms to Union Govt. On 14.06.1996 he informed the DG[P], Gujarat of his decision of taking Voluntary Retirement for which he requested the Gujarat Govt. to update his Service Book, etc. on priority basis. The applicant has brought to notice that his transfer, though is an incidence of service, has been served on him as a punitive measure on account of political vendetta and suffers from malafide and, therefore, he has prayed for quashing of the order of transfer with a prayer to be allowed to continue on the present post of IG, CISF till the completion of his tenure and as an interim measure the operation of the impugned order be stayed.

7. The matter was posted for admission as well as on hearing on interim stay on 17th July, 1996. However, on that day, a reply on behalf of respondents no. 1 & 2, i.e. the Union of India and DG, CISF was filed by an Asstt. Inspector General of CISF at Patna. The reply on behalf of Union of India could not have been filed by an officer of the sub-ordinate organisation like a CISF, that too in a matter where serious allegations have been made against both the Minister and the Home Secretary. However, Shri Rameshwar Prasad, learned Advocate General for the Union of India took up the preliminary objection that this Court has no jurisdiction to adjudicate this matter as was stated in the written statement of the AIG of CISF filed on 16.07.1996. It was stated that "the applicant is presently serving as IG in the CISF and the said Force has personnels working throughout the country and is not confined to any particular State or Union Territory. Officers serving in this Force are liable to serve in any part of the country and no officer has a right to claim that he would work only in a particular post or region. The applicant is a Member of the IPS which is an AIS carrying with it the liability to be posted at any part of the country. Matters concerning transfer of officers is part of the administrative functions and concern deployment of available manpower and utilising the same in the best interest of the Force. This Hon'ble Tribunal would not interfere with such executive and addministrative functions of the Force and deployment of its manpower in the exigency of service and requirements of the Force." Shri Rameshwar Prasad also invited my attention to Section 2 of the Act by which all Military Forces

and Para Military Forces employed in the Govt. of India are kept outside the purview of the Tribunal's constituted under the A.T.Act and, therefore, the applicant, though initially belonged to IPS, had become a part of the CISF, which is a Para-Military Force in the Govt. of India and as per Sec 21F of the CISF Act he is a member of the Force in the supervisory capacity and, therefore, outside the jurisdiction of the Tribunal. Besides, he stated that the applicant had been serving for more than 10 years at Patna and therefore, had to be shifted out of Patna as it was not desirable to allow him to continue for an indefinite period or till the conclusion of his tenure in the CISF. The respondents denied any malafide on the part of the respondent no.3. In any case, respondet no.3 had ceased to be holding any office in the Union of India. It was stated that the respondents no. 1 & 2 have been impleaded only in the official capacity and not in their personal capacity and hence, no allegation of malafide is valid against respondents no.1 & 2. The allegations of malafide are without any merit and are denied. It was further stated that the post of IG, CISF at Mumbai was vacant and it was in the interest of the Force to post the applicant to Mumbai. The applicant has not exhausted the departmental remedies available to him before approaching this Tribunal. ~~and~~ the applicant ~~be~~ directed to make a representation of his grievance to the authorities ~~and~~ and pursue his present application only in the event of his being not satisfied with the decision that may be taken on his representation. During the course of arguments, Shri Rameshwar Pd. reiterated that the applicant was promoted as IG, CISF for a periof of three years. This

does not indicate that these three years were required to be completed only at Patna. The three years tenure was the total tenure permitted to him as in IG in the CISF and as the master/employer, the Govt. had the right to post him anywhere and they had done so by posting him to Mumbai in this case. After hearing the learned counsel, respondents were directed to file replies through duly authorised and competent level in the Ministry and Shri Mohd Taslimuddin was directed to file a reply in his individual capacity since he had ceased to be @the MOS[H].

8. In the subsequent written statement filed on behalf of respondents no. 1 & 2 by a Desk Officer of the MHA on 22nd July, 1996, a very feeble attempt was made as to how the applicant got the notings of the file relating to his transfer which is not permissible under Section 123 of the Indian Evidence Act, 1872. The respondents also filed copies of MHA office notings of the concerned file as directed by me with copies to all the parties concerned including the applicant before the next date of hearing on 24.07.1996.

8.1 Shri Rameshwar Pd., learned Advocate General, appearing on behalf of Union of India again on 24.07.1996 reiterated that the applicant was not covered by the A.T.Act, 1985, since he was member of the CISF under the CPMF Act, 1968, vide Sections 3 & 4 of the Act. In this regard he cited the case of **Vedanand Singh Vrs. Union of India**, decided by the Hon'ble Supreme Court and cited at 1988 SCC P.790. He also gave the other citation reported at 1987 [3] SLR P. 820, by which members of the CISF as Armed Force of

the Union of India were not covered by the A.T.Act. Shri Prasad also cited the dicta of the Hon'ble Supreme Court in the case of **Chief General Manager [Telecom], Vrs. Rajendra Ch. Bhattacharya [1995 AIR SC 814]**

wherein the Apex Court held "It is needless to emphasize that a Govt. employee or any servant of a Public Undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that the respondent holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of his posting. Since the respondent has no legal or statutory right to claim his posting at Agartala, and therefore, there was no justification for the Tribunal to set aside the respondent's transfer to Dimapur." Learned Advocate General then cited the latest ruling of the Hon'ble Supreme Court in the case of **Gurusharan Sinha Vrs. Smt. Ashwani Sachdeva, reported at 1996 AIR SC 1175**, wherein it was held that "the guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have

been passed in favour of persons who were not entitled to the same but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause of this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such clauses are enforced, it shall amount to directing to continuance and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination." In view of these rulings of the Hon'ble Supreme Court, the applicant has no case. If others have been allowed to continue at a particular station, that does not give him any legally enforceable right to claim immunity from transfer.

8.2 The fresh written statement filed by the Ministry was also almost the repeat of the earlier written statement filed by the sub-ordinate office and confirmed the facts of the case in regard to the order of posting. The respondents confirmed that the complaints and allegations made by the Govt. of Bihar against the applicant were enquired into and hence the matter was closed. Even the matter regarding the complaint of Shri Lal Babu Rai, an MP from Chapra was found to be baseless and the same was closed. The applicant was transferred out of Patna on administrative ground and it was not an arbitrary and punitive order or ordered due to political vendetta and malice. As regards applicants' desire for voluntary retirement, the applicant had simply informed CISF of

his intention to seek voluntary retirement, which is not the formal notice required under the Rules for seeking voluntary retirement. The Service Book of the applicant is being updated.

9. The rejoinder filed by the applicant on 22.07.1996 brought to notice of the Court that the respondent no.3 had not responded at all the Court's notice and respondents no. 1 & 2 had not furnished details of the vital issued mentioned in the O.A. particularly in paras 4.5 to 4.11 where specific charge of malafides were attributed and had taken shelter under Section 123 of the Indian Evidence Act, 1872. The applicant contested the preliminary objection raised by the respondents that this Tribunal had no jurisdiction since under the IPS Tenure Rules there is no limit of an IPS Officer's posting in CISF at a particular place during the Tenure Posting. Rule 8 of the IPS Tenure Rules indicates that "In case a DIG[P] is promoted as IG[P], the combined tenure as DIG/IG[P] shall not be less than five years, but the tenure will be so extended as to give the officers a minimum of 3 years as IG[P]. So the tenure will be end on the expiry of five years service as DIG-cum-IG or three years as IG whichever is later. Thus, as per the Tenure Rules an IPS Officer on deputation to CISF can be at a place for eight years." Only in case of CBI Officers the benefit of extention upto 7 years are given on which station posting shall not exceed four years. For 'hard core' officers of IB there is no limit of tenure yet the Rule 4 says that 'they would, however, be periodically rotated between the Hqrs. and outstation posts.' The applicant further stated that the respondent no.3 had

not chosen to file a written statement nor was there any representation on his behalf which itself proves that there were malafides in ordering his transfer. He also stated that statement made in the written statement that the applicant was transferred on account of 14 years stay in Bihar out of 24 years of service, is incorrect. The applicant's stay in Bihar is only for 12 years and that too in several phases and in accordance with the deputation rules of the Govt. of India. The respondent no.5 had erroneously observed that the applicant has been in Bihar since 1978 and in Patna since 1983, except for a brief period when he was OSD in the MHA. He alongwith this rejoinder has enclosed his posting particulars as at Annexure-A/10, which would indicate that the applicant had not been at Patna since 1983, as alleged by the respondent no.5. He reiterated the facts relating to his posting in Bihar and at Patna as stated in the O.A. Besides, he brought to notice that there were many officers in the CISF who stayed at one place for the entire length of their tenure. Applicant has given the case of Shri P.K.Senapati, who completed his three years of tenure as IG at Calcutta. Shri Gautam Kaul, IPS, has been in CISG both as DIG & IG, in Delhi for more than 7 years. Shri S.M.Shangari, IPS was in CISF at Mumbai as IG between 25.08.1989 to 03.06.1996 except for a brief period when on promotion he had gone to Delhi.

9.1 The applicant denies that he has used insulting or intemperate language in the O.a. and he had not obtained the information from the official notings of the files of the Ministry. However, he ascertained the information from persons having

knowledge about it as his transfer was a common knowledge in the MHA and was widely discussed.

9.2 The applicant has also questioned that his transfer to Mumbai has been done on account of administrative exigency. The post of IG, CISF, Mumbai was not more important than the IG, CISF, Patna. The repatriation of Shri S.M.Shangari, IG at Mumbai was known well in advance and proper steps should have been taken in advance to fill the vacancy by posting an IPS Officer on deputation. Since that was not done, another officer, Shri Ajay Prasad, IG was asked to hold additional charge of Mumbai office on 30.05.1996. But this order had been amended within a week thereafter for reasons which at best could be attributed to the malafides on the part of the respondent no.3 alone. Had that not been so, there were two other IGs at New Delhi, Mr. Gautam Kaul and Mr. B.L.Vohra, who were at Delhi for 7 years and 3 years respectively, the choice fell on the applicant only due to the Minister's desire to wreak vengeance on him.

9.3 As regards his not seeking the departmental remedies before approaching this Tribunal, he brought to notice that his transfer to Mumbai zone was got approved by the Prime Minister of the country. The applicant realised the futility of making a departmental representation in this matter knowing full well that the position and the stand taken by the Ministry would hardly ever be resiled. Since, the decision was also taken on extraneous factors there was no scope for administrative remedies. Besides, the applicant felt that the respondent no.5 had become more

prejudiced after filing the O.A. and thus, any further representation, as suggested by the respondents in the written statement, will be of no consequence.

9.4 The applicant also contested the written statement of the respondents that he is not covered by the A.T.Act. As per Section 14[1][b][i] of the Act, 1985, as a Member of the AIS, he has right to have redressal of his grievances in regard to his service matter adjudicated by this Tribunal. Even after joining the CISF on deputation, he does not cease to be the member of the AIS.

9.5 As regards his promotion as IG for three years, the applicant states that this proposition is unheard of in the bureaucratic annals. A promotion to a post is not for a specific period alone. Only the tenure of a posting is limited by a number of years and in this case on his promotion as IG, CISF, he was given a tenure of three years as IG at Patna where he was posted as a DIG. The applicant's posting at Patna was against a newly created post and it is on the record with the respondents that the applicant did not like to go anywhere outside Patna on account of certain compelling circumstances. The applicant had waited for a long time for a promotion posting at Patna whereas his junior colleagues like one Shri R.K.Niyogi, [a promotee from Dy.S.P. in CISF] was promoted to the rank of IG several months before the applicant's promotion in January, 1996. In order to stay in Patna the applicant had forgone several years seniority in his Cadre State of Gujarat where his junior colleague Shri S.S.Khandwawala, an IPS Officer of 1973 batch, had

already been promoted to the rank of IG long back in December, 1972, and even IPS Officers of 1976 batch in Gujarat were promoted to the rank of IG in November, 1995. Thus, officers junior to the applicant by four years got promotion earlier than the applicant because he chose to be in Patna. He had to bear the ignominy of remaining DIG on 01.01.1996 where officers of 1976 batch were shown to be IG in the Civil List. The applicant's case is that he was posted as IG, CISF for a three years tenure and he could not have been transferred out so abruptly and suddenly on extraneous considerations and malafides on the part of respondents no. 3 & 4. The ACC approval for promotion as IG was obtained for the vacancy arising at Patna. Thereafter, a notification was issued for a three years tenure as IG after he had assumed charge at Patna as an IG, CISF.

9.6 The applicant filed a M.A.No. 154/96 for bringing some additional facts to the notice of the Tribunal that by an order dated 07.06.1996 the work distribution between the Home Minister and MOS[H] was notified wherein CISF was the only CPMF which was kept under the respondent no.3. Respondent no.3 ^{had} specifically insisted upon allocation of this CPMF while all other CPMFs were allowed to be under the direct control of the Home Minister. The insistence of the respondent no.3 to control the CISF was solely motivated to facilitate him to shift the applicant from Patna. Respondents no.3 & 5 were swayed by the dictates of the respondent no.4 who is a very powerful man in the Janta Dal hierarchy by virtue of being the President of the Party and even the respondent no.3 was appointed as MOS[H] on recommendation of the respondent no.4. The

respondent no.4 had through a Press Conference held on 02.07.1996 had not only justified the applicant's transfer but also had demanded that the applicant should be removed from service unceremoniously [KAAN PAKAR KAR] and sent to jail. When the Chief Minister of Bihar was asked about the pressure allegedly put by the State Govt. to get the applicant transferred, he did not deny it, rather he replied that the applicant had 'over-stayed' in Bihar for well over 15 years when central deputations to any place are not to exceed 10 years.

9.7 In one of the rejoinder, the applicant has also stated that in January, 1996, when the DG, CISF discussed the posting of the applicant at Patna with the respondent no.5 [Shri K.Padmanabhaiah], the respondent no.5 had shown ^{been} the posting particulars of all the IGs, CISF and the respondent no.5 had suggested at that time that the applicant should remain posted in spite of the long stay. There was no rule of long stay operating against the applicant just a few months back in January, 1996, whereas, that rule had now been canvassed by the respondent no.5 by proposing his transfer out of Patna. It was strongly stressed that there was no posting policy in the CISF for supervisory officers and a number of such officers at various levels were allowed to continue at one station for very long periods.

10. The respondent no.4, the Chief Minister of Bihar and the President of Janta Dal, Shri Laloo Pd. Yadav has filed his affidavit on 16.07.1996 with a copy to the applicant wherein he denied the allegation.

made against him in para 4.11 of the O.A. in which the applicant had alleged that political pressure was exercised by him as the National President of the Janta Dal or as the Chief Minister of Bihar in the MHA to transfer the applicant from Patna. The respondent no.4 also denied the allegation made in para 4.16 as incorrect and false that there was any malice on the part of respondent no.4. He also denied the allegations made in para 4.17 wherein it was said that the criminals were let loose by the respondent no.4 who had created terror and had taken part in massive rigging of election in Patna Constituency. The election in this Constituency was held under the supervision and control of the Election Commission of India and the Respondent no.4 had no role in this matter as a CM of Bihar. The deployment of either CISF or other CPMFs for the conduct of the election is done by the District Administration as per the guidelines of the Election Commission of India. The respondent no.4 has stated that the applicant was showing more concern in election duty than his own duty. Similarly, the applicant cannot take upon himself the responsibility of passing comments on the elections to the Bihar State Legislative Assembly. The respondent no.4 denied that the applicant had earned wrath of the ruling party of the State. He denied that he had blamed any senior officer of the CISF for the defeat of any candidate of his party and that the activists of the Janta Dal demanded transfer of the applicant because his Force had obstructed fair polling on the day of poll in two Patna Parliamentary Constituency. He also denied that the respondent no.4 was vindictive and manipulated applicant's transfer. Respondent no.4 also

denied the allegations made in para 4.19 wherein it was said that Shri Laloo Pd. Yadav won the Assembly Elections on account of his several subtle ways of rigging the elections in active collusion of various authorities. The Home Commissioner of Bihar, Shri D.P.Maheshwari had put up a note for his approval for transferring the applicant from Patna in the normal course and the same was not directed to be put up by the respondent no.4. He admits that the State Govt. had every right to report about the omissions and commissions of the applicant because he had commented adversely on the State Administration without any justification and jurisdiction. It is for the Govt. of India to accept or not to accept the recommendation of the State Govt. The respondent no.4 equally denied the allegations made in para 4.20 that he had asked the Chapra MP, Shri Lal Babu Rai to complain against the applicant to the Prime Minister and to the Home Minister. Shri Lal Babu Rai had done so as a MP and he has every right to write to the Hon'ble Prime Minister as well as to the Home Minister about the conduct of any officer posted in Bihar. Respondent no.4 ultimately denied that the transfer of the applicant is an outburst of the respondent no.4 and he had at any time threatened the applicant to send him to jail. It is equally incorrect and false to say that the respondent no.4 had ever said to kick the applicant out of service after "KAAN PAKAR KAR". He also denied the allegations made in para 4.22 that the applicant's transfer is an outcome of a political vendetta by a political personality like the respondent no.4, Shri Laloo Pd. Yadav and Shri Mohd. Tasliuddin, respondent no.3. He further denied that he had objected to the applicant's

association with the Patna Mahavir Mandir affairs.

11. Respondent no.5 had also file his written statement on 5th August, 1996, wherein he had denied the allegation of malafide levelled against him and stated that he had acted strictly on the basis of his judgement in the matter and on the basis of facts placed before him in the files and not on the basis of any malafide or external political pressure as alleged. He rejected the allegations made in para 4.11 and denied that he had made any misleading observation or that misleading observations were made under the political pressure of Shri Taslimuddin or Shri Laloo Pd. Yadav. He denied that he was directed by Shri Taslimuddin or Shri Laloo Pd. Yadav to transfer the applicant from Patna. He had made a purely courtesy call on 02.06.1996 ^{when} [Sunday] after the swearing in of the new Ministry on 1st June, 1996, allocation of the portfolio of MOS[H] was assigned to Mr. Taslimuddin. He stated that Shri Taslimuddin had sent a word to him through his office staff to meet him on Sunday, June 2, 1996, at the New Bihar Sadan and accordingly, when he went there he found that Shri Taslimuddin was sitting with the Chief Minister of Bihar who had his suite on a different floor. The Chief Minister introduced him to Shri Mohd. Taslimuddin and mentioned that "Shri Taslimuddin is a political leader who has done a lot of work at the grassroot level but is new to Delhi. He mentioned that I should guide him properly in the Home Ministry. I had a cup of tea with both the Ministers and left the place. It is categorically denied that there was any discussion regarding Shri Kishore Kunal or about his transfer." He also reiterated that the observations

made by him in his note ddt. 07.06.1996, that the applicant had been in Bihar for a long time, is not misleading and incorrect. While examining the suggestion of respondent no.3 to revert the applicant back to his parent Cadre, namely, State of Gujarat, it came to notice that the applicant had been away from his parent cadre for a very long time and he spent a major part of it in Bihar either on duty or on study leave or in waiting, etc. A statement showing the details of the posting particulars of the applicant is annexed hereto as Annexure-R/1. A perusal of the same would show that practically from August, 1978 onwards, except for brief periods, the applicant has been in Bihar. In para-7 of his reply, Shri Padmanabhaiah states the following :

"Taking into account the fact that the applicant has been in Bihar for a long time and further taking into account that he is an outstanding officer it was suggested by me in my note that he may be posted as IG, CISF in Mumbai. It is relevant to mention that a vacancy in the rank of IG in CISF had arisen at Mumbai on 02.06.1996 when the incumbent was reverted to his parent cadre on completion of his deputation tenure. The above suggestion made by me was bonafide and taking into account the consistently outstanding record of the applicant with a view to utilise the services of the applicant in an important area like Mumbai."

He, thereafter, stated that the allegations of malafide directed against him are mis-conceived and without any basis and are hereby again denied. The suggestion made by him in his note dt. 07.06.1996 was bonafide and not

actuated by any malafide or external pressure as alleged by the applicant.

12. Shri Mohd. Taslimuddin, the respondent no.3 responded to the notice of the Tribunal on 12.08.1996 when an Advocate, Shri D.K.Singh appeared on his behalf and mentioned before the commencement of the hearing that he has been asked by the respondent no.3 to seek time for filing reply for which a vakalatnama had been sent by the respondent no.3 and was on its way to Patna from Delhi. Since this was a mere statement having no legal standing in regard to both a vakalatnama or even an unsigned M.A. by the respondent seeking participation in the O.A., the matter was heard notwithstanding the non-participation of the respondent no.3 on 12.08.1996 with the presumption that the allegations against the respondent no.3 stood confirmed as they had not been denied specifically by the respondent personally. However, on 13.08.1996 a M.A. no.179/96 was filed wherein this request of being given an opportunity of hearing was repeated in writing but the same was filed by one Shri Ranjit Singh, a clerk of the counsel, Shri D.K.Singh. This M.A., therefore, was found to be filed by an incompetent person and, therefore, it was rejected on 14.08.1996. Thereafter, the respondent no.3 again filed a M.A.No. 184/96 which was presented on 16.08.1996 with a prayer that the respondent no.3 may be given an opportunity of hearing and he may also be heard and also be allowed to file his written statement as serious allegations have been levelled against him. He cited a case decided by the Hon'ble Supreme Court, reported in AIR 1988 SC P.371 [Vinod Kr. Singh Vrs. Banaras Hindu University] wherein the Hon'ble Supreme Court had held that "alteration or modification in judgment before pronouncement in Court can be done only in exceptional cases." Though the

learned Sr. Standing Counsel for the Union of India, Shri J.N. Pandey had brought to my notice that the judgment once reserved has to be pronounced within three weeks, he fairly conceded that he would not object if the respondent no.3 is given an opportunity for filing an affidavit as an exceptional measure and be heard if necessary. Accordingly, the M.A. was accepted with the direction that he will file an affidavit on or before 27.08.1996 positively with copies served on all other parties including the applicant in the O.A. so that they can file their objections and replies immediately without any delay for facilitating further hearing. The applicant himself during the disposal of the M.A.179/96 on 14.08.1996 had prayed that in the interest of natural justice and in the interest of law, the respondent no.3 must be allowed to file his reply in the matter.

13. The matter came for final hearing on 29.08.1996 by which time affidavit had been filed by Shri Taslimuddin, respondent no.3. In his statement dated 25.08.1996, which was received by the parties concerned on 27.08.1996, the respondent no. 3 had first objected to the jurisdiction of the Tribunal and the maintainability of the application on the ground that the applicant was working as the member of the CISF which was one of the Armed Forces of India and excluded from the applicability of the A.T. Act. Having made this point, the respondent no.3 further prayed that since the matter related to an important question of law it should be heard by a Division Bench to set the matter at rest. He also submitted that since he was appearing for the first time with the written statement, he had a

right to make a prayer for hearing of this case by a larger Bench to settle the dispute. He further denied having any personal acquaintance either with the applicant or with Shri K., Padmanabhaiah [respondent no.5] presently functioning as the Home Secretary to the Govt. of India. He also stated that since he had never been well acquainted with the applicant the question of having any malice against the applicant does not arise. He, however, admits that he might have met the applicant, who is a Central Govt. employee on deputation to Bihar, but was never in such a close terms that he may have either any liking or prejudice for the applicant. Thus, allegations made by the applicant in paras 4.11, 4.12 and 4.21 are uncalled for, baseless and have been made with oblique motive. He admitted that the respondent no.3 had ordered for the transfer of the applicant and that order was passed in Hindi but it was the end result of the material supplied to the respondent no.3 and on no other considerations. The respondent no.3 stated that he regarded the applicant to be a very competent officer who appeared to be well read and scholarly person and this respondent has respect for such a person. But the applicant had made wild allegations against the respondent no.3 in para 4.27 and had crossed the limit of freedom of speech when he made personal aspersions on this respondent of a very serious nature. The respondent no.3 further stated that it was not fair on the part of the respondent no.5 to file an affidavit saying that he was directed by the respondent no.3 or he had sent words to Mr. Padmanabhaiah to see him in Bihar Niwas. Shri Padmanabhaiah had come on his own and it is also a fact that Shri Padmanabhaiah came while

respondent no.3 was sitting with the Chief Minister of Bihar in his suite. He was introduced to the respondent no.3 by the Chief Minister of Bihar and while the respondent no.5 and the Chief Minister of Bihar were talking with each other, the respondent no.3 was sitting there without participating in the talk. The respondent no.3 had neither given any direction nor had he issued any instruction to the respondent no.5. The respondent no.3 made no attempt to over hear the dialogue going between the respondent no.5 and others. Thus, the allegations levelled against the respondent no.3 are neither cogent nor valid but are wild allegations. As the MOS[H] it was his bounden duty to pass some order on file placed before him an the respondent no.3 passed the order in Hindi in usual course of business when the file came before him on the materials placed therein. The respondent no.3 is also unable to state at whose instance the file had moved but he asserted that he has not passed any order out of any malice or any prejudice. He summed up his written statement by saying that the present application is not maintainable before this Tribunal and allegations of malafide levelled against him is highly motivated and lastly prayed that to set at rest all the issue and the matter may be heard by a Division Bench of the Tribunal. He totally rejected the charges made in para 4.27 as the no Court of Law has held him guilty of the allegations.

14. In the meantime, the applicant through several M.As filed on 21.08.1996 had obtained permission to have assistance of a counsel for final submissions and summation of the case, whereas, in

earlier hearings he had made the submissions in person. His M.A.No.199/96 for further hearing on submission of rejoinder to the written statement filed by Shri Mohd. Taslimuddin, was rejected and it was decided to hear the case thread bare on the date fixed. Accordingly, the learned counsel for the applicant, Shri Vinod Kanth started his argument when he candidly submitted that he did not know from where to start the hearing in view of a plethora of M.As. in this matter coupled with a number of rejoinders from the applicant and written statements from respondents. He also pointed out the mistake of the Registry in having placed this matter for hearing when the O.A. had not even been admitted at any stage earlier. Shri J.N.Pandey, learned Sr. Standing Counsel for the Union of India brought to my notice that these submissions on the part of the learned counsel for the applicant was only for gaining time and cannot be accepted by the Tribunal in view of the fact that this Tribunal had taken very lenient view in giving the applicant the permission to have the assistance of a counsel for the final submission and summation of the case and had given a further opportunity for hearing on 29.08.1996 only in the interest of natural justice and for hearing the submissions of the respondent no.3, Shri Mohd. Taslimuddin. It was very clearly ordered on the previous occasion that the matter will be decided at the admission stage itself and the learned counsel for the applicant now cannot bring in this technicality of the matter having not been admitted and being disposed of at the admission stage itself. This Tribunal has been disposing of matters at the admission stage itself after permitting the parties concerned opportunities

for filing written replies and also hearing them which is necessary for disposal of any matter for adjudication under the A.T.Act. The technical omission of the matter having not been admitted cannot be fatal to the adjudication and in view of the agreement of the parties that this matter will be disposed of at the admission stage itself, the further hearing of this matter after admission was not permissible. Shri Kanth was accordingly directed notwithstanding the mistake committed by the Registry of the Bench in listing this case as a "hearing matter" as rectified now, the matter is to be heard for final disposal and he could begin his submissions. However, the parties were given the liberty of filing written submissions which had to be put up before me on Monday, the 2nd September, 1996, before 10.30 A.M., if any points remained uncovered.

15. Shri Vinod Kanth tried to establish the malafides on the part of respondent no.3 as well as respondent no.4 and his main brunt of attack was ~~at~~ the respondent no.4 who had made a dis-paraging remarks regarding the applicant by saying that officers of such type should be kicked out of service by "KAAN PAKAR KAR" and put inside the jail. He stated that these submissions of the respondent no.4 were made in the presence of respondent no.3 who had passed the orders of transfer under the influence and pressure of respondent no.4. Shri Kanth stated that he had audio-video cassettes of the telecast of the interview by the respondent no.4, Shri Laloo Pd. Yadav on 2nd & 4th July, 1996, wherein he had made these dis-paraging remarks in the company of Shri Mohd. Taslimuddin and he wanted the Court's permission to display the same for

the benefit of the Court and the litigants in the matter. This submission of Shri Kanth was not found acceptable in view of the fact that the remarks made on 2nd & 4th July, 1996, were subsequent to the passing of order of the transfer of the applicant on 12th June, 1996, by the MHA and subsequently by the Home Minister-cum-Prime Minister. The malice or the malafides, if any, which could have pressurised the respondent no.3, had to be in the mind of the respondent no.3 before the date when he actually passed any orders on the file. Any subsequent statements made through the Press or through the electronic media would not be able to assist the applicant in establishing malafides either on the part of the respondent no.4 or the respondent no.3. In view of this, the prayer of the learned counsel for the applicant was rejected but he was further asked to submit the stills of the audio-video cassettes wherein the respondent no.4 was found to be in the company of respondent no.3 while making the alleged remarks against the applicant on 2nd & 4th July, 1996.

16. Shri B.P.Pandey, learned counsel for the respondent no.3, Shri Mohd Taslimuddin, argued out the non-involvement of the respondent no.3 in the matter of transfer of the applicant as per the written statement filed on 25.08.1996, wherein he had stated that he passed the orders on the basis of the materials before him as they came to him on the file and he never directed the Home Secretary or the officer of the MHA to issue orders regarding the repatriation of the applicant or his transfer to Mumbai. Shri Pandey stated that as a MOS[H], the respondent no.3 was only

supposed to see notings of the Home Secretary who had recommended his transfer to Mumbai on account of his long stay at Patna which was not found to be desirable. He had passed the order in Hindi and as a rustic politician he was not supposed to go through all the pages of the file to ascertain the full facts in regard to the applicant. He went by the information of the Home Secretary and passed on the file to the Home Minister-cum-Prime Minister for passing orders. If there was any arbitrariness or violation of any rules, it was on the part of the Home Secretary who had advised him to transfer the applicant to Mumbai. He also brought to notice the intemperate language used by the applicant in para 4.27 in the O.A., wherein, he has said that he would not like to serve under a Minister with alleged criminal antecedents. This wild accusation of the application has resulted in the ouster of the respondent no.3 from the Union Council of Ministers. Shri Pandey stated that these are unsubstantiated allegations as no Court of Law has held him guilty for the alleged criminal antecedents. At this stage Shri Pandey was asked to look at the photocopy of the notings which was available with the Court and had also been served on all the parties concerned. Shri Pandey stated that his client did not have the advantage of having gone through the files since he demitted the office and was not in a position to have access to the file. His attention was invited to page no.7 of the noting wherein para-1 starts with the statement of Director[P], Shri N.K.Sinha, that "MOS[H] desired to know the position regarding the Central deputation of Shri Kishore Kunal, IPS [GJ:72], presently posted as IG, CISF, Eastern Zone, Patna."

This statement in the noting that "the MOS[H] desired" was further corroborated by the noting of the JS[PL] wherein he had stated that "this was discussed with the SS[ISP]/HS after MOS had spoken to him." Even the Home Secretary in his written statement dated, 05.08.1996 has, in para-6 stated that, "while examining the suggestion of respondent no.3 to revert the applicant back to his parent cadre, namely, State of Gujarat, it came to notice that the applicant has been away from his parent cadre for a very long time and he spent a major part of it in Bihar either on duty or on study leave or in waiting etc." This would totally make the statement of respondent no.3 in his affidavit to be unreliable and not straight forward. His statement would have sounded trust worthy if he had while passing typewritten orders in Hindi on the file on 12.06.1996 refuted the notings of the junior officers of the Ministry. Shri Pandey after having a look at the photocopy of the notings stated that if Shri Taslimuddin had made such observation and given directions, it was because of the suggestions given to him by somebody. On the specific question whether that suggestion was given by Shri Laloo Pd. Yadav, the Chief Minister of Bihar and the President of Janta Dal, Shri Pandey categorically denied that. However, he admitted that Shri Taslimuddin, being the MOS[H] could have been approached by the interested party/parties to remove the applicant from Patna on transfer or on repatriation to his parent cadre. However, Shri Pandey was categorical that no directions were given to the Home Secretary when he met him in the New Bihar Sadan in the suite of the Chief Minister of Bihar, Shri Laloo Pd. Yadav, who had introduced Shri K. Padmanabhaiah to him

and who was having discussions with him [Shri Padmanabhaiah] without the participation of respondent no.3. Shri Pandey when asked why was it necessary for the respondent no.3 to let the file go to Home Minister[Prime Minister] when he was made incharge of CISF as per notification dated 07.06.1996, stated that the file stood marked to Home Minister by the Home Secretary. He finally submitted that transfer orders were approved by the Prime Minister-cum-Home Minister on administrative grounds in public interest and Shri Mohd. Taslimuddin had no malafides and also no role in the matter.

17. Shri Rameshwar Prasad, learned Advocate General for the Union of India objected to the rehearing of this matter bringing to the notice of the Court that full opportunities had been provided to the applicant as well as to the respondents to place their points of view before the Court and the matter had been heard at length and the Court need not give further opportunities to them for submissions in the matter. However, he again reiterated the point that the Tribunal had no jurisdiction in the matter as CISF was an Armed Force of which the applicant was a member. He had spent more than 10 years at Patna and had to transferred out in the interest of the Force even though no public interest was indicated in the matter, the same was implied. Shri Prasad took me back to the several citations referred by him including that of 1995 LAB 1574 SC [State of Bihar Vrs. S.S.Kumar] & 1995 LIC P.2601-2605, wherein the intervention of the Court in transfer matter have been discouraged. Thereafter, Shri J.N.Pandey, learned Sr.

Standing Counsel for the Union of India contested the demand of the applicant for the opportunity to display the audio-video cassettes which was not a document which can be perused by the Court under Section 22 of the A.T.Act. He stated that the audio-video cassette was not relevant in the matter as it is a corroborative evidence and not a document which can be relied on its own in the Court of Law. On being asked as to why as an exceptional measure the Home Minister was consulted in the matter on 13.06.1996 when the MOS[H] had the full powers of disposing of a routine transfer matter, Shri Pandey stated that the file had gone to the Home Minister since it involved an IPS Officer and as per Sl.No.23 of the annexure to the notification dt. 07.06.1996 all IPS matters had to be submitted directly to the Home Minister.

18. During the hearing on the earlier dates, the Additional Advocate General of Bihar, Shri G.P.Rai had stated on 12.08.1996 that the respondent no.4 had no locus-standi in the matter as he was not a part of the Central Council of Ministers and as a President of Janta Dal he could not direct either the MHA or the Home Secretary to have the applicant removed from Patna either on repatriation to his parent cadre or to transfer to Mumbai. Respondent no.4 has emphatically denied all the allegations made in the O.A. and also the public statements attributed to him on the 2nd & 4th July, 1996, which were telecast through the DD Network. Shri B.N.Yadav, learned Standing Counsel for the State of Bihar reiterated the same position which was canvassed by Shri G.P.Rai and brought to notice of the Court that the applicant has raised the issue

regarding the Mahavir Mandir Trust with an eye on the future course of action which may be inconvenient for the applicant to face. The applicant as the Secretary of the Trust is facing certain allegations and in order to forestall the same he has taken pre-emptive action through this O.A. alleging interference of the Chief Minister in his transfer matter so that he is not made ineffective on that Trust. Shri Yadav, therefore, prayed that the matter should not be allowed to linger any further and orders must be passed at once in the O.A.

19. Shri Vinod Kanth, learned counsel for the applicant summed up the entire O.A. by saying that the respondent no.3 was not a political naive in Delhi who had to be guided by the Home Secretary as per his written statement filed before this Court. Shri Taslimuddin was a M.P. for six times and he must be having thorough idea and knowledge about the bureaucratic and other Govt. procedures and he cannot, therefore, claim himself to be a rustic. In any case, a rustic person may lack in polish but he could not be ignorant of the notings made on the file wherein it had been quoted that he had himself desired the repatriation of the applicant from CISF to his parent Cadre on account of his involvement in the Mahavir Mandir Trust as well as non-partisan role in the Assembly/Parliamentary Elections. He brought to bear upon me that the applicant had all along been considered an outstanding officer and was given a special consideration by the Govt. of India by posting him as IG, CISF in January, 1996, and allowing him to have extension till that time he had completed that tenure DIG in October, 1995. The Govt. of India and the

Home Secretary [P] wanted him to continue in Patna and once the post of IG, CISF was created in the Cadre, ACC approval was obtained to have his tenure extended and ultimately he was posted at Patna in preference to other eligible IGs who could have been brought here. IPS Rule of Tenure on deputation post is for 3 years after promotion from the post of DIG. Therefore, the posting of the applicant from 15.01.1996 had to be reckoned from that date thereafter at Patna and he could not be transferred out abruptly and suddenly by telegraphic order in July, 1996. He stated that the Govt. of India notification by which he was appointed as IG for 3 years implied an uninterrupted posting at Patna as he was a deputationist in the CISF and had been desirous of being at Patna and had even forgone his promotions in the parent cadre from an earlier date with the sole intention of staying at Patna for an extended period. The CISF Supervisory Officers at the level of IG are always appointed on transfer by deputationists from other departments. Admittedly, an officer on deputation is posted only after obtaining his consent for a particular posting available at a particular station. The applicant had volunteered for a deputation in the CISF as DIG as the same post was available at Patna and thereafter again consented for posting as IG for another spell of 3 years on promotion. It was for this vacancy at Patna that the ACC's approval for his promotion as IG was obtained by the Home Ministry. Therefore, the Govt. notification saying that he is being promoted as IG in CISF for 3 years could not mean anything else but as IG, CISF, at Patna for three years where he had already taken charge on 15.01.1996. It was his legitimate expectation

that he would be allowed to continue till the end of his tenure as an IG for 3 years at Patna. The Govt. itself had considered his requirement of stay at Patna taking into consideration that officer has sacrificed four years of seniority by staying in Patna as DIG, whereas, his juniors in the IPS Cadre of Gujarat belonging to 1976 batch had already been promoted as IGs in the parent Cadre.

19.1 Thereafter, Shri Kanth brought to notice the mis-leading notes of the Home Secretary whereby he had stated that "it is not desireable that an officer should continue at one place for a long time." As per the annexure appended thereto, he came to Bihar admittedly on 23.11.1978 but had been in Bihar only upto 12.07.1984 when he relinquished his office as SSP, Patna. Thereafter, he was on [redacted] leave for more than four months and had not been given any posting till January, 1985. Learned counsel took me through Annexure-A/10 of the O.A. which contained the posting particulars of the applicant which has not been controverted by the respondents. As a matter of fact, this is more accurate and reliable compared to the one annexed with noting dt. 04.06.1996 wherein his 7 months as Asstt. Director in Bihar Police Research Development has been presumed to be at Patna. The fact remained that between 18.08.1984 to 08.10.1990 he was either in his parent cadre Gujarat or on very short spells of deputation to New Delhi & in Bihar at Patna. His posting at Patna during the period was only for about a year. He was given two years study leave by his parent cadre for doing Ph.D. between the period 08.10.1988 to 08.10.1990, during the period he was borne on the

strength of Gujarat Cadre and was not on the deputation to this CPO/CPMF. He was posted as OSD, Ayodhya on 08.10.1990 and continued that job till 03.04.1991 whereafter he was posted as DIG, CISF in Patna followed by his promotion as IG, CISF on 15.01.1996. Thus, the statement that the Officer had stayed in Patna from April, 1983 onwards, except for a period of six months, is totally malicious and misleading. His statement that it was not desirable for the applicant to continue at Patna for a very long period, is also not supported by any guidelines and rules framed by the MHA. Nor was there any complaint against the applicant which could have necessitated his shifting from Patna. Curiously, the respondent no.5 has not mentioned anything about the applicant's involvement in the Mahavir Mandir Trust and the undesirability of his association therewith.

19.2 In the written statement filed by Shri K. Padmanabhaiah, he has clearly mentioned that he had acted on the suggestions of the MOS[H] for moving him out. This would go to show that Shri Padmanabhaiah had indeed put up that note under the influence of the MOS[H] with whom he had an earlier meeting on 2nd June, 1996. The fact whether he had discussed this matter with the MOS[H] on that date is irrelevant so long the recordings on the file indicates that he put up a false statement to facilitate an order of transfer is good enough to prove his malice in law against the applicant. His malice in law is further aggravated by the fact that on 07.06.1996 he had himself issued a notification detailing therein the distribution of the work between the Home Minister-cum-Prime Minister and

the MOS[H]. It was clearly stated therein that all matters ^{not} listed specifically in annexure shall be looked after by the MOS[H]: The said order of the MHA signed by the Home Secretary is reproduced below:

OFFICE ORDER

NEW DELHI the 7th June 1996.

The Prime Minister has approved the following work distribution between himself [as Home Minister] and the Minister of State [Home] with immediate effect.

2. Cases relating to the matters specifically listed in the Annexure shall be submitted to the PM[as HM] direct.

3. All other matters pertaining to the business of the Ministry of Home Affairs are allotted to the MOS[H] and will be disposed of by him. However, the MOS[H] shall submit the following cases to the PM as Home Minister.: -

i. Proposals requiring the approval of the Cabinet/Cabinet Committee relating to the matters allotted to him.

ii. Cases involving Policy decisions relation to the matters allotted to him.

iii. References received from the President pertaining to the matters allotted to him.

iv. Important communications from the State Govt. and important cases where there is difference of opinion between the Ministry of Home Affairs and a State Govt. or other Ministries/Departments; cases likely to affect the relationship between the Govt. and the Parliament or between the Govt. and the Press.

v. Any other item which the Prime Minister [as Home Minister] may require to be submitted to him."

K. Padmanabhaiah
Home Secretary

To

- (1) Minister of State for Home.
- (2) Secretary to the Prime Minister.
- (3) All Officers/Sections/Desks in the Ministry of Home Affairs including the Department of Official Language.

annexure H-2

A perusal of above office order, would show that there is no mention of the CISF and it was in pursuance to this notification that the file was submitted to the MOS[H] for orders. But by design the Home Secretary also marked the file to Home Minister-cum-Prime Minister for his final orders thereon so that a finality to the order was obtained and the applicant would have no opportunity of representing against the unfair transfer order to an higher authority. The contention of the learned Sr. Standing Counsel for the Union of India that the file was submitted to the Home Minister because he was concerned with the matter relating to the IPS as at S.No.23 of the annexure, is not tenable. The general matters regarding IPS could have gone to the Home Minister-cum-Prime Minister but routine and normal transfers of IG rank officers which were statutorily required to be disposed of by the DG, CISF, had no justification to be decided at the level of the Home Minister-cum-Prime Minister unless and until there were some malicious intentions working in the minds of both the respondents no. 5 & 3. Respondent no.3 who was such a seasoned MP having six tenures could not have allowed the file to go to the Home Minister unless he was thinking of having the approval of the Home Minister in a blatantly uncalled for and unwarranted transfer of an IG who had been posted at Patna only very recently.

19.3 Shri Kanth stated that the statements of respondent no.3 and the submissions made by his counsel are totally unbelievable and unreliable in view of the fact that the noting made on the file at p.no.7 & 8 clearly indicate that respondent no.3 had given

directions to the Director [P] and also the JS[P] either on 03.06.1996 or 04.06.1996 wherein he had told these officers to process the case of the applicant for repatriation to Gujarat Cadre. The Director [P] of the Ministry had done his work somewhat diligently. The only mistake he allowed in his note. was about obtaining prior approval of the Govt. for working in Mahavir Mandir Trust as per Rule 13 of the AIS Conduct Rules which only prescribes information for participating in a social/charitable association/Trust. However, the JS[P] was more pliable and he went out of his way to have a telephonic conversation with the DG, CISF, who was at Hyderabad at that time, to obtain his proposal for transfer verbally though this was required to be obtained in writing for reasons to be recorded. The Home Secretary, whose job was to act as bulwark for the protection of the rights and privileges of a Govt. servant, instead of bringing forth the correct position before the MOS[H] and the Home Minister [Prime Minister], assisted the Minister, respondent no.3, by giving a false picture of applicant's prolonged stay in Patna which according to him was not desirable without substantiating any grounds thereof. Shri Taslimuddin who claims to be a rustic and who could not have passed any order without perusing the notings at page 8/N, has himself recorded in the note sheet at page 9/N "In view of the facts mentioned above, it is necessary that the points regarding Shri Kunal's involvement in the Mahavir Mandir Trust should be enquired into so as to find out if he had obtained a permission from the Govt. to be a member of that Trust or not." He made a further observation that simultaneous action regarding repatriation of Shri Kunal to his parent cadre in

Gujarat should be initiated as he has stayed out of that State for very long time. These two points were not submitted by the Home Secretary in his noting dated 07.06.1996 at page 9/N of note sheet. Thus, Shri Taslimuddin had passed that order keeping in view his own earlier directions to officers of the MHA and agreed to the transfer of the applicant as proposed by the Home Secretary giving his further directions regarding involvement in Mahavir Mandir Trust and repatriation to Gujarat Cadre. The Prime Minister [Home Minister] agreed with the transfer order of the applicant to Mumbai and also the enquiry regarding involvement in the Mahavir Mandir Trust but he did not pass any order regarding repatriation of the officer to Gujarat Cadre. In view of these notings and in the light of the discrepancies in the written statement/affidavits filed by the respondents no.3 & 5 it is grossly clear that they were acting under severe malafides/malicious intention in law against the applicant which led to his transfer order.

19.4 Subsequently, Shri Kanth dilated upon the point of transfer as incidence of service and the legitimate expectation of the applicant was to stay at Patna. He brought to notice the ruling of the Hon'ble Supreme Court in the case of **Abnikant Roy Vrs. Union of India**, wherein at para-10 of the order the Hon'ble Supreme Court had held that "transfer orders can be reviewed judicially when it suffers from malafide, arbitrariness or violation of the guidelines and infraction of any professed norms or principles of transfer governing transfer." The incidence of transfer is only for affecting employees who are on transferable

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jobs. There are number of organisations wherein all the posts are endemic in particular station and no transfer is prescribed or permissible since the organisation functions itself in that very station. In this connection he brought to notice the office of the Chief Election Commission, the Speaker's Office, the Hqr. Office of the CAG, the Hon'ble Supreme Court's Office, etc. wherein the staff and the Officers work in the same station for the entirte length of their service. On the other hand there are certain cadres and services where transfer is an incidence of service and there are tenures both for the post and stations prescribed thereto. The posting on deputation are essentially a transfer on request as a deputationist is appointed on a post as per his own consent for that transfer and appointment. Having once given a consent for appointment on transfer to a particular station and post, the officer on deputation cannot further be transferred to another station or post without his consent. Thus, the transfer of the applicant from Patna to another station is not an incidence of service. The incidence of service as transfer can be applicable to him in his own cadre in Gujarat where he can be transferred either in the same station or elsewhere. So long he was on deputation from the IPS cadre of Gujarat to the CPMF as DIG, CISF at Patna and later as IG, CISF, he had consented to a total stay of eight years including three years as IG, CISF, Patna.

19.5 In the written submissions filed by the applicant as per the directions it was brought to my notice that the MHA had always tried to accommodate him at Patna and posted as IG, CISF even after extending

his tenure as DIG, CISF by few months under the orders of the ACC. Learned counsel for the applicant cited the case of **Shri D.K.Goel Vrs. Union of India**, decided by the Division Bench of the CAT, Madras bench, reported at 1992, 19 ATC 475, wherein it was held, "From the conspectus of the various factors as briefly mentioned above, we are of the opinion that, in the absence of a specific provision in the rules or regulations of the Govt. or in the deputation terms, a deputationist to a particular post in a particular place cannot be transferred by the receiving department authorities to another post in another place without the consent of the deputationist....."

"We have already stated earlier, one of the factors which would have been taken into account by the deputationist before consenting for deputation would be the place of posting also. We cannot see how such a deputationist can be forced to a position in a place which is not to his liking. we are, therefore, of the view that there is a basic lack of jurisdiction in transferring such a deputationist in a particular post in a particular place, to another place or another post against his will." Thus, the applicant cannot be transferred to Mumbai without his consent and against his wishes.

19.6 It was the legitimate expectation of the applicant to continue as IG, CISF in Patna till the completion of three years of deputation as per Govt. notification. It was brought to my notice that the applicant had a clear right under the application of the principle of legitimate expectation which was considered by the Hon'ble Supreme Court while deciding the case of **Madras City Wine Merchants Association Vrs.**

State of T.N. [1994] 5 SCC 509, decided on July 27, 1994, wherein the Division Bench of the Hon'ble Supreme Court held that legitimate expectation may arise- [a] if there is an express promise given by a public authority; or [b] because of the existence of a regular practice which the claimant can reasonably expect to continue. [c] such an expectation must be reasonable.

However, if there is a change in the policy or in public interest the position is altered by a rule or legislation, no question of legitimate expectation would arise." The applicant had a legitimate expectation of being treated in a certain way by an administrative authority by allowing him to continue at Patna for the notified three years tenure as IG, CISF as they had allowed others in similar circumstances. The Kerala Bench of the Tribunal has passed similar orders in the case of R.R.Nair & Ors. vrs. Chief General Manager, Telecom, Kerala Circle, when they had allowed 30% allowance to be given to the applicants for at least one year when they had been brought to work on the RTTC as lecturers with an expectation that they will be paid 30% as special allowance throughout the tenure of five years.

19.7 The learned counsel for the applicant further tried to establish that the transfer was not an incidence of service for him when he had joined the CISF. The CISF Rules, 1969, itself provide that the IPS officers of IGs rank will be appointed by transfer on deputation and while on deputation they shall be

governed by the Tenure Rules applicable to them. The Rule 17 of the CISF Rules, 1969, reads as follows :

17[4][i] During the period of deputation, the officer on deputation shall be governed by the provisions of the Act and the rules and regulations made thereunder.

Provided that the provisions of the Rules 55, 56, 58 & 65 shall not apply to him.

[ii] without prejudice to the foregoing, every such officer shall be subject to the rules of discipline applicable to the corresponding rank of the Force.

[5] Save as aforesaid, the other terms and conditions of deputation shall be such as may be agreed upon between the lending authority and the Central Govt. [Emphasis provided]

[6] notwithstanding anything contained in these rules, the Central Govt., or the Inspector General, as the case may be, may without assigning any reason terminate the period of any officer at any time and such termination shall not be deemed to be punishment."

Rule 68 of the CISF Rules, 1969, would clearly establish that the applicant who came on deputation was governed by the conditions of their contract.

20. In the written submission of the learned Sr. Standing Counsel for the Union of India, who had also received an advance copy of the written submission of the applicant dated 02.09.1996, the respondents reiterated that the file relating to the applicant was placed before the Home Minister-cum-Prime Minister at that time as per item no.23 of the annexure

which specifically mentions that the matter relating to the IPS Officers will be placed before the Home Minister. They have also admitted that the respondent no.3, Shri Taslimuddin was the MOS[H] and incharge of CISF but Shri Kishore Kunal, the applicant was in the CISF, at the same time is an IPS Officer of Gujarat Cadre and hence, the file was endorsed to the Prime Minister [Home Minister]. Learned Sr. Standing Counsel for the Union of India also negatived the contention of the applicant in regard to doctrine of legitimate expectation as it was clearly enunciated by the Apex Court in the case of **Union of India vrs. Hindustan DevelopmentCorpn. & Ors.**, reported at AIR 1994 SC P.988. Thus, the Tribunal could not grant a relief on the basis of doctrine of legitimate expectation.

21. I have given very anxious and thoughtful consideration to the averments, pleadings and arguments of all the parties concerned. The first and the foremost contention of all the respondents in this matter had been regarding the maintainability of this application due to lack of jurisdiction under Section 2[a] of the A.T. Act which states that the provisions of this Act shall not apply to-[a] any member of the naval, military or air forces or of any other armed forces of the Union." There is no dispute over the fact that the CISF is an Armed Force of the Union of India. The only question which has to be decided is whether the Supervisory Officers and members of the Armed Forces are totally outside the jurisdiction of the A.T. Act and the Tribunals constituted thereunder. The learned Advocate General brought to my notice the orders of the Principal Bench given in the case of [i] **Anand Thakur**

Vrs. Union of India, decided on 21.07.1986, cited at 1987[3] SLR CAT, Delhi P.820-821, wherein the agitation was of a constable in the CISF and [ii] Rajendra Kr. Sachar Vrs. Union of India, on 22.03.1991 in O.A.No. 648/91, were disposed of with the direction that an IPS Officer working in the BSF cannot seek relief before the Tribunal as it has no jurisdiction since the applicant was working in CISF/ or was on deputation with the BSF which are Armed Forces. I respectfull dis-agree with the view held by the Principal Bench in the case of Shri Rajendra Kr. Sachar when a ruling was given that an IPS Officer on deputation with BSF the could not approach the Tribunal for service matter as they had become the part of the Force. This was an order per in curiam as it was not brought to the notice of the Bench at that stage that ~~IPS Officers~~ as per the rules of recruitment of CISF and CISF Rules, 1969, are governed by their own IPS Rules and IPS Officers Tenure Rules and they are governed by their own service rules even when they are on deputation with the Armed Force, like the CISF. This view was held by the Cuttack Bench of the Tribunal which decided the agitation of an IPS Officer of West Bengal Cadre who had approached the Tribunal while working as a DIG, CISF, through an O.A. No.592/93 and gave him relief sought for. I personally know of another matter agitated by an IPS Officer working in the BSF who filed an O.A. in the Principal Bench in 1993 and the same was adjudicated by the ^{an IPS Officer on deputation in BSF} Bench. Even the case of Shri N.K.Singh was adjudicated in the CAT, Principal Bench which came up finally before the Hon'ble Supreme Court in an SLP and Civil Appeal after the applicant had failed before the Tribunal at New Delhi where the application was

rejected not on the ground of lack of jurisdiction. In Hon'ble Supreme Court's decision there is the mention in para-3 as, "the Central Administrative Tribunal has rejected the appellant's application without even requiring counter affidavits to be filed by the respondents. This indeed was an unusual course to adopt when the appellant had alleged malafides on the basis of certain facts."

21.1 As has been averred by the applicant in his rejoinders and very well canvassed before this Bench by the applicant himself and the learned counsel for the applicant, Shri Vinod Kanth, there is no doubt in my mind after the perusal of the relevant CISF Rules, 1969, and the Schedule-I annexed therewith regarding the rules of recruitment of an IPS Officer when appointed by transfer on deputation, are governed by the Tenure Rules applicable to them as also their own Service Rules as they are working on a contractual or consensual appointment which brings them under the operation of Rules 17[5] & 68 of the CISF Rules, 1969, reproduced earlier. As an IPS Officer of an All India Service governed by IPS Tenure Rules, the applicant is well within his right to approach the Tribunal under Section 14[b] of the A.T. Act, 1985. The O.A. is, therefore, held to be maintainable.

22. The next point be met ~~with~~ by the Learned Advocate General's contention that the Tribunals and High Courts are precluded from interfering with transfer order as the transfers are not legally enforceable rights. The Hon'ble Supreme Court in the case of Shilpi Bose Vrs. State of Bihar, reported at [1991] 17 ATC

P.935, have ruled that , "Courts should not interfere with the transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A Govt. servant holding transferable post has no vested right to remain posted at one place or the other, he is liable to be posted from one place to the other. Transfer order issued by the competent authority do not violate his legal rights even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order." In the case of Rajendra Roy Vrs. Union of India, reported at [1993] SCC 148 [1993[1] SLR 126 SC], the Supreme Court observed as follows :

"It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down unless such order is passed malafide or in violation of the rules of service and guidelines for transfer without proper justification, the Court and the Tribunal should not interfere with the order of Transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department."

These ruling were further followed up in the case of E.E.P.Royappa Vrs.State of Tamil Nadu & Ors., reported at 1994 [1]SLR 497, wherein the Apex Court has observed that, "any administrative order which is malafide, arbitrary or based on extraneous considerations, can be

questioned and quashed by the Court, if they are violative of Articles 14 & 16 of the Constitution." The latest judgment of the Hon'ble Supreme Court in the case of Shri N.K.Singh Vrs. Union of India &Ors., reported at 1994[5] SLR, the Hon'ble Apex Court further reiterated this very position by saying in para-23 of the judgment that, "transfer of a Govt. servant in a transferable service is a necessary incident of the service career.... Unless the decision is vitiated by malafides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the Courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated." Having found the matter within the scope of the A.T.Act, 1985, the transfer of the applicant has to be judicially reviewed and scrutinised on the matrix of arbitrariness or infraction of any professed norm or principle governing the transfer and malafides. Before I come into the question of malafides I decided to examine the legality and the element of arbitrariness involved in the transfer.

23. For proper appreciation of this agitation one has to go through the relevant provisions of the CISF ACT, 1968 and CISF Rules, 1969 [for short Act & Rules] which are reproduced herein:

S.4 : Appointment & Power of Supervisory

Officers:- The Central Govt. may appoint a person to be the DG of the Force and may appoint other persons to be IG, DIG,

Commandants, Dy. Commandants
Asstt. Commandants of Force.

or

4[2] The DG and every other supervisory officer so appointed shall have, and may exercise, such powers and authority as is provided by or under this Act."

S.7 : Superintendence & administration of the Force : [1] The Superintendence of the Force shall vest in the Central Govt., and subject thereto and to the provisions of this Act and of any rules made thereunder, the command, this Act and of any rules made thereunder, the command, supervision and administration of the Force shall vest in the DG. [Emphasis supplied]

S.15 : Officers and members of the Force to be considered always on duty and liable to be employed at anywhere in India.

[1] Every member of the Force shall, for the purpose of this Act, be considered to be always on duty, and shall, at any time, be liable to be employed at any place within India.

Rule : 4[2] : CISF Rules, 1969, Duties of IG : [1] The IG shall be the head of the Force and shall be responsible for maintaining it in a State of high efficiency, training, discipline and morale and he shall for that purpose take all such steps as he may consider necessary, by way of tours, inspections, examination of records, calling for reports, framing regulations, issuing instructions and giving directives on all matters pertaining to the administration of the Force. He shall in particular guide and direct the DIG and the Chief Security Officers and it be his duty to ensure that each DIG maintains the Force in his charge at a high

level of efficiency and discipline.

[2]

Rule 66 of the CISF Rules, 1969, states that, "transfers of members of the Force may be made as under :

[1][i] Of Supervisory officers by the Director General.

[ii] of and upto rank of Head Constable from one to another unit under the administrative control of one Commandant, by that Commandant;

[iii] of the enrolled members of the Force not covered by [ii] above, from one units another units within the zone by the Dy. Inspector General of that zone; and

[iv] of the enrolled members of the Force from one zone to another, by the Dy. Inspector of the Force Head Quarters.

[2] An authority superior to the authority competent to make an order of transfer under sub-rule [1] may make an order of transfer or annul, change or modify any order of transfer under sub-rule [1].

Rule : 68 :Non-applicability of Rules in certain cases :- [1] These rules shall not apply to Supervisory officers or members of the Force on contract who shall be governed by the conditions of their contract.

[2]

24. A simple reading of these statutory provisions would indicate that the DG, CISF alone was competent authority to issue the order of transfer of the applicant. The IGs are to be appointed by the Central Govt. as per Section 4 of the Act and,

thereafter the administrative control over this officer devolves upon the DG of the CISF as per Rule 66[1][i] Rules. The question of Central Govt. coming in for routine transfer of an IG is not envisaged either under the Act or in the rules. Executive instructions issued by the MHA, as per Annexure-A/3, which is a secret letter dated 10th May, 1993, the Govt. took a decision that posting and transfer of the members of the CPMF would be made with prior approval of the MHA. By this order, transferring power of the DG, CISF was not withdrawn totally. All that it required was that an officer of the IG rank could be transferred on the initiative of the DG, CISF, wherein he will seek the approval of MHA. The executive instructions could not have been at variance of the CISF Rules stated above without amending the Rules. The power of approval can be exercised both in affirmative and negative fashion subject to the needs of each case but the initiative still rested with the DG, CISF for transfer of IGs. That letter dt. 10th May, 1993, does not vest the MHA with the powers of issuing transfer suo-motu. It is an admitted fact that the DG, CISF, had not recommended the transfer of the applicant out of Patna either on repatriation to the State Govt. of Gujarat or to Mumbai. All that officer had done merely was that he submitted to the dictates of the MHA without inviting their attention to the provisions of the CISF Act and the Rules which made him the responsible officer for such a transfer.

25. Admittedly, the applicant was the incharge of the Eastern Region which is higher than the zone and he was not covered by the Section 15 of the Act which is

in regard to the officers and members of the Force to be employed at any place within India. As per the duties of the IG, he is required to be at a specified station to look after the zones and other Public Sector Undertaking. In Mitra's Legal & Commercial Dictionary the term 'employed' has been given two meanings. One has got the sense of being engaged, the other has the sense of a contract of service being established between the workers and the employer. The word 'employed' in connection with the affairs of the Union or of a State carries the sense of being engaged or occupied in connection with the affairs of the Union or of a State. [Pukhraj Vrs. Ummaidram AIR 1964 Raj 174: 1964[2] Cr.L.J. 339]. As per this meaning members and supervisory officers of the Armed Force can be engaged in any action or any duty anywhere in the country but that does not necessarily mean that such a member/supervisory officer will be stationed with his Hqrs. anywhere in the country. An IG needs to be stationed at a place as per Tenure Rules governing his deputation and cannot be employed at any time any any place in India since he is not merely a Member of the Force but a supervisory officer on deputation with agreed conditions of contract. The applicant had been given a tenure of 3 years as IG in CISF w.e.f. 15.01.1996. As per his submissions which have not been controverted so far he had stayed in Patna with the hope that he would be eventually made in IG and allowed the further tenure of 3 years. The respondents no.1, 2 & 3 were parties of this decision and they allowed him an extended tenure as DIG till the post of an IG was created at Patna and was filled up by giving him the posting at Patna. As per the contractual and consensual

terms of deputation, his stay at Patna could not have been cut-short by a suo-motu action of the MHA without obtaining his willingness to move out of Patna. Having once given him a 3 years tenure as an IG it was the applicant's legitimate expectation that he will be allowed to continue his tenure at Patna and not shifted abruptly and through a telegraphic order which had a very unsettling effect on him and hurt him personally. Respondents no. 3 & 5 have admitted that the applicant was an outstanding officer. Hence, this unceremonious transfer has hurt him all the more acutely, when the order was served on him suddenly and without any legitimate provocation. The telegraphic order received by him was so peremptory that immediate compliance was asked for informing the MHA. It was nobody's case that the officer was engaged in certain kind of undesirable activities which was running counter to the interest of Central Govt. or even to the State Govt. and his further presence at Patna would have aggravated the situation further. No administrative grounds or/exigencies involved in this transfer was communicated either in the telegraphic order dated 02.07.1996 or with the copy of the order received alongwith the photocopies of the notes of the MHA. The order dated 27th June, 1996, reads like this :

"Subject : Transfer and posting of Shri Kishore Kunal, IPS[GJ:72]

The undersigned is directed to say that the matter of posting and transfer of Shri Kishore Kunal, IPS[GJ:72] has been considered and the competent authority has approved the transfer and posting of Shri Kunal as IG, CISF in Bombay with immediate effect. CISF are request to send a compliance report in this regard to this Ministry at the earliest."

Thus, the argument canvassed by the learned counsel for the respondents that the transfer was ordered in the public interest and exigency of service cannot bear judicial scrutiny at all. The question of posting and transfer of Shri Kishore Kunal was at no time taken up by the DG, CISF with the Ministry nor was any proposal sent to the Ministry for approval. Thus, the notification issued on 27th June, 1996, through a confidential letter of Most Immediate nature contained erroneous and misleading decisions which were not based on any proper and correct legal exercise of power. Order of transfer was not passed by a competent authority since the competent authority ~~happened to be the DG, CISF, and it was for him to issue this notification after obtaining Ministry's approval. The matter of approval is an internal matter between the DG, CISF and the MHA.~~ Approval is the condition precedent for appointing or transferring a Govt. officer of a particular level but a competent authority, as per the statute and Act, has to be the one so named in that statute/Act who can issue the order. DG, CISF at no stage of the proceeding has stated that he had specifically sought Ministry's approval for the transfer of the applicant. He has also not denied as respondent no.8 that he was not pressurised to suggest shifting of the applicant from Patna to Mumbai.

26. The only ground taken by the respondent no.5, the Home Secretary to the Govt. of India is that, it was considered undesirable that the applicant should be allowed to continue at Patna and in Bihar where he had spent more than 14 years of his service almost at a stretch with a small gap of nearly six months. As has

been canvassed by the learned counsel for the applicant and the applicant himself, the Tenure Rules prescribes the maximum years of tenure in the combined rank of DIG and IG as eight years without stipulating how many years of this tenure the officer has to complete at one station. The CISF Act and the Rules do not prescribe any tenure either of a post or a station. The duties of the IG, as has been described above, do not lend him the position in which he has to interact with the public as has been described in the N.K.Singh's case as sensitive & important post inviting public interest. In Shri N.K.Singh's case, in para-4 of the judgment the Hon'ble Supreme Court laid down that,

"there are two aspects of transfer of a public servant holding a sensitive and important post. One aspect relates to the private rights of the public servant as the individual pertaining only to his service career. The other is concerned with prejudice to public interest irrespective of the individual interest. The element of prejudice to public interest can be involved only in transfers from sensitive and important public offices (and not in all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration."

Undeniably, the transfer of the applicant was not on the ground of larger public interest and exigencies of administration. He was covered only by the private right of a public servant as an individual pertaining

to his service career. There has been no averment on the point that the applicant was anywhere involved in any kind of sensitive/public related problems when the transfer was ordered. Even the incidence which was brought to the notice of the Home Minister by the MP of Chapra or by the Chief Minister of Bihar in 1995, were enquired into and closed as not substantiated. As such the question of transfer order on the ground of undesirability of long stay does not get any support either from the rules governing his transfer and the public interest by which such a transfer could be ordered by the Govt. exercising its extra-ordinary power by virtue of overall superintendence over the affairs. It has been held in the case of State of Kerala Vrs. Balakrishna, cited at 1993 SLR 151, "But when public authority asserts that was in public interest, at least the files should disclose that fact, even if public interest does not find place in the order of transfer." Thus, I feel that the transfer of the applicant is not maintainable on the ground of public interest^{than} exigencies of service. Besides, the order was passed arbitrarily in contravention of rules and there was infraction of the professed norm or principle governing the transfer.

27. The learned counsel for the applicant had canvassed at the last stage of the argument the application of doctrine of legitimate expectation based on the Hon'ble Supreme Court's decision in the case of Madras City Wine Association Vrs. State of T.N. [supra]. Fortunately, the learned Sr. Standing Counsel for the Union of India has brought to my notice a later judgment of the Apex Court in the case of Union of India & Ors. Vrs. Hindustan Development Corpn. & Ors, reported at AIR 1994 SC P.988, which clearly supports the case of the

applicant against this transfer. The Hon'ble Supreme Court in several paragraphs of their judgment had stated as follows :

"Of late the doctrine of legitimate expectation is being pressed into service in many cases particularly in contractual sphere while canvassing the implications underlying the administrative law.

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The concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that "Legitimate expectation" is ~~the latest~~ recruit to a long list of concepts fashioned by the courts for the review of administrative action and this creation takes its place beside such principles as the rules of natural justice, unreasonableness, the fiduciary duty of local authorities and "in future, perhaps, the principle of proportionality."

Legitimate expectation gives the applicant sufficient locus standi for judicial review and the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallised right as such is involved. The protection of such legitimate expectation does not required the fulfilment of the expectation where an overriding public interest requires otherwise. In other words where a person's legitimate expectation is not fulfilled by taking a particular decision than decision-maker should justify the denial of such expectation by showing some overriding public interest. Therefore, even if substantive protection of such expectation is contemplated that does not grant an absolute right to a particular person. It simply

ensures the circumstances in which that expectation may be denied or restricted. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But a person who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the Courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily by a question of fact. If these tests are satisfied and if the Court is satisfied that a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before the decision affecting such legitimate expectation is taken has resulted in failure of justice and whether on that ground the decision should be quashed. If that be so then what should be the relief is again a matter which depends on several factors. The Court's jurisdiction to interfere is very much limited and much less in granting any relief in a claim based purely on the ground of 'legitimate expectation'."

The application of the applicant is not totally based on the legitimate expectation alone but on the grounds of exercise of power arbitrarily and in violation of the

statutory rules and, therefore, I find that this doctrine has applicability in his case. The transfer order is vitiated because it was in contravention of legitimate expectation of the applicant's right though not legally enforceable ^{but through assurance held} out to him by the earlier actions of the respondents themselves.

28. As regards the incidence of transfer, the learned counsel for the applicant in his brief submission brought to my notice that this has been used by the various pronouncements of the Hon'ble Supreme Court and which has been mis-construed by the learned counsel for the respondents. The Supreme Court had used this word "incidence of service" in the case of E.P. Rayappa VRs. State of T.N. [[1974] 2 SCR 348] and observed that, "it is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service....." In the case of Shri N.K.Singh [supra], their Lordships have further elaborated this point by saying that, "transfer of a Govt. servant in a transferable service is a necessary incident of the service career." Thus, previous pronouncement of the Hon'ble Supreme Court makes it amply clear that transfer is an necessary incident of service career in a transferable service. Applicant's deputation in the CISF was not on a transferable service but was against a ~~Vacant~~ post of IG, CISF at Patna for which a contractual or consensual appointment was made with the approval of the ACC of Union of India. The question of any further transfer thereafter did not arise. The applicant was liable for a transfer anywhere as a permanently absorbed CISF Officer or an officer belonging to all India Cadre. However, the

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applicant is an AIS Officer of the IPS Cadre belonging to the State of Gujarat. His liability is for any transfer, both station and post transfer within the State of Gujarat or wherever the Govt. Gujarat has an outlet or any representative office. Thus, the question of posting him to Mumbai as an incidence of service cannot be canvassed by the respondents and, has therefore ~~been~~ negatived. It is also held that the applicant has no liability to be transferred in the CISF as an incidence of service.

29. The only point which needs now to be considered is malafides on the part of the respondents no.3, 4 & 5 in ordering the transfer of this applicant through the impugned telegraphic order. After perusing the written statements, averments and counter arguments in this matter, the allegation of malafides or at least malice in law appears to be coursing through the veins of all the facts brought to my notice. The Home Secretary in his written statement states that he was summoned on the 2nd June, 1996 [Sunday] by the Minister designate of the MOS[H], Shri Mohd. Taslimuddin [respondent no.3] to see him at 4 P.M. When he goes there Shri Taslimuddin was reported to be in the suite of the CM of Bihar on another floor where he is taken. The CM who happens to know him ^{from} before introduced him to the new MOS[H] and tells him to guide him in the Ministry as he was new to Delhi having done outstanding work at the grass root level. After introduction he [the Home Secretary] takes a cup of tea and returns back and there is no talk about the transfer of the applicant during the short stay. The respondent no.4,

Shri Laloo Pd. Yadav, the CM of Bihar also corroborates the same story that the Home Secretary came to his suite when Shri Taslimuddin was also there and there was no discussion about the applicant's transfer. However, the apple-cart of this story is upset by the joining in of the respondent no.3 by filing a written statement through which he states that he [redacted] neither knew the Home Secretary before the meeting on the 2nd June, 1996 [Sunday] nor he had summoned him to meet him in the Bihar Sadan either in his room or in the suite of the CM of Bihar. The Home Secretary came on his own and he had some confabulations with the CM of Bihar, Shri Laloo Pd. Yadav while he was sitting in that suite. He did not over hear anything out of this conversation. The only thing of consequence which was conducted that afternoon was that the respondent no.4 introduced him to the Home Secretary and there was some 'Salam Bandagi' between them. The respondent no.3 had neither given him any direction nor issued any instruction. The respondent no.3 also stated that the file came to him in due course without any direction from him in this matter and he passed the order in Hindi in usual course on the material placed before him and on no other consideration. He, however, asserted that he had not passed any order out of any malice or prejudice. He had no malice against the applicant as he did not know him ^{from} before nor [redacted] he had any grouse against him [redacted]. Similarly, the respondent no.4, Shri Laloo Pd. Yadav, the CM of Bihar had denied any role in this matter and having exercised any malafidde influence over the Home Secretary, Shri K. Padmanabhaiah. He says that, "It is equally incorrect and false to say that he had given any direction to Shri Padmanabhaiah to transfer the applicant from Patna. Shri Padmanabhaiah

HS says the same in his written statement. Although in the latter part of the statement in para-6 he states that, "while examining the suggestion of Respondent no.3 to revert the applicant back to his parent cadre, namely, State of Gujarat, it came to notice that the applicant has been away for his parent cadre for a very long time and he spent a major part of it in Bihar either on duty or on study leave or in waiting etc." Statement of these respondents, therefore, has to be considered by reading between the lines.

30. The Respondent no.5, Shri K.Padmanabhaiah, calls on the CM of Bihar in his suite while the Respondent no.3 is present there. It is not the normal practice of any Secretary to the Govt. of India to visit the CM of a State in their Guest House on Sunday as a normal courtesy call. Since, the respondent no.3 had denied that it was on his request or summon that the HS had come to the Bihar Sadan in the CM's suite, it can safely be presumed that the invitation for Bihar Sadan had ^{been} given to the HS by the CM of Bihar. It has been stated by the Respondent no.5 that this invitation/message was given to him by his office staff and they would have mistaken the message coming from Shri Mohd. Taslimuddin. The very fact that Shri Mohd. Taslimuddin was at that time of appointment sitting with the CM would also indicate that the invitation had really gone from the CM and not from Shri Mohd. Taslimuddin, who had not yet known him or met him. The status of Secretary in the Govt. of India, specially the HS is so high that normally ^{No} _{MOS[H]} would consider it ^{prudent} to invite HS to meet him on ^a Sunday without having any personal relationship unless it was in the interest of administration and Govt. affairs. A HS also normally

would have taken affront of being invited by the MOS[H] in his room and the meeting taking place in some other room where the CM of Bihar State was sitting. Further, it appears quite abnormal and bizarre for the respondent no.5 to visit both Shri Laloo Pd. Yadav and Shri Mohd. Taslimuddin on 2nd June, 1996 [Sunday], for a mere introduction with Shri Taslimuddin. The MOS[H] would have been introduced officially in the Home Ministry either on the date he was given Home portfolio or on the subsequent date when he would have assumed the charge of the Office. This is also borne out by the statement of the respondent no.3 that the CM of Bihar, Shri Laloo Pd. Yadav and Shri K. Padmanabhaiah knew each other quite well as they were engaged in some deep conversation in which the respondent no.3 did not participate and even did not try to over hear. There is no statement from the respondent no.5 about the subjects he talked with the CM of Bihar, Shri Laloo Pd. Yadav. It is also predictable that he will not disclose that conversation as he is bound by the Official Secret Act. As a Secretary it is his duty to keep secrets specially of matters which concern the security of the State, etc. as has been very aptly described by Sir James Hacker in his exhilarating book "Yes Minister". However, Shri Padmanabhaiah has let the cat out of bag when he said "while examining the suggestion of respondent no.3 to revert the applicant back...." in contra-position to the office note dated 04.06.1996 indicating that the MOS[H] had desired and felt that the applicant should be reverted to his parent cadre. MOS[H]'s felt desire cannot be construed to be a suggestion but a direction to the MHA for processing the case of the applicant for repatriation. A felt

desire of a Minister is always considered a direction in the bureaucracy. But the respondent no.5 mentions this as suggestion which was not made on the file by the respondent no.3 before the respondent no.5 recorded his recommendations in the matter. Obviously, this suggestion was made sometime between the 2nd June & 4th June, 1996. There is no mention by anybody about what had happened on the 3rd June, 1996, which was a working day. Obviously, all the directions which were given on the file related to the 3rd June, 1996, and the subsequent notings on the file commenced on 4th June, 1996.

30.1 The next point which also makes the action of respondent no.5 quite suspicious is the fact that he twisted the bio-data of the applicant in a manner prejudicial to his interest by stating that his [applicant's] stay at Patna was undesirable without giving any ground and also by giving a misleading observation that he had spent almost all his 14 years after 1978 at Patna with a brief period of six months as OSD in the MHA. Even the annexure to the noting was made out in a fashion to have a visual impact that the applicant had spent almost all his 14 years at Patna. There are 32 entries in the annexure of which 8 entries relate to his five years stay in the CISF at Patna in the rank of DIG & IG. These 8 entries could have been conveyed through one line entry. By this method, the MHA officers tried to give a picture that the stay of the applicant at Patna was excessively long.

30.2 The bureaucrats of the MHA should have good knowledge of rules and regulations before making devastatingly wrong statements that enquiry should be made regarding the permission obtained by the applicant

in regard to his association with the Mahavir Mandir Trust as envisaged under AIS Conduct Rule 13[2]. No permission is required as per Rule 13[2] of the Conduct Rules and only a simple information is necessary. Moreover, Mahavir Mandir Trust is not one of the banned religious organisation and the involvement of the applicant with that temple was known to the concerned authorities i.e. the State of Gujarat and the State of Bihar which had through its own gazette notification had shown him as one of the Trustee. Both the JS[P] and the SS[ISP] did not point out the provisions of the CISF Act/Rules regarding transfer of an IG although an attempt was made to obtain the verbal recommendation of the DG, CISF, for the transfer. The DG, CISF tamely acquiesced in this exercise by saying that if he has to be transferred/repatriated, he should be at least allowed to be retained in the CISF at Mumbai. He was required to put his foot down in this entire exercise as he was the DG of the CISF. If it was not permissible for the Ministry to act in the manner they were intending to act, the DG, CISF was within his rights to stall the whole process by refusing to give his verbal consent to the transfer of the applicant. Then the Home secretary, the head of bureaucracy who should have all the knowledge of rules and regulations concerned of All India Services, particularly, when he himself belongs to an All India Service, governed by the AIS Rules, must have known that transfer in a deputation post against the wishes of the Officer concerned, cannot be ordered unless it is in the larger public interest or in exigency of service. All that he could indicate was the undesirability without any substance on which that observation was made. He had to comply with the

suggestions of the then Minister, Shri Taslimuddin, may be for some quid pro quo and his whole aim was to make the transfer order full proof which could not be altered at any stage later. Knowing the arbitrariness and impropriety of this transfer order, he marked this file on 07.06.1996 to the MOS[H] and the Home Minister/Prime Minister when he had himself on that very date issued a notification by which the entire activities of the CISF were put under the control of the MOS[H]. The MHA under his control was only required to approve the transfer. Home Secretary could have approved the transfer of the applicant on the so-called verbal consent of the DG, CISF without marking the concerned file to the MOS[H] or to the Home Minister. But, in spite of his powers, the Home Secretary made both the Ministers, the MOS[H] and the Home Minister, parties to the decision. The arguments of the learned counsel for the applicant has all along been that the transfer of IGs in the CISF had never been made on any occasion on approval at the level of Minister. Even after the May 1993 orders, the Home Secretary himself was taking all the decisions. Why it became necessary for the Home Secretary to obtain the approval of the MOS[H] and of the Home Minister [Prime Minister], can only be explained by the sense of guilt that he was recommending some orders which were not bonafide. Doing such an act which in fact was an act with malice in law, he had to associate his superiors. The malice in law on the part of the respondent no.5 becomes very clear in view of what has stated above and which cannot be allowed to be washed away by a bland statement denying that there was any pressure from any quarter and he acted bonafide. Malice in law has been

differentiated from 'Malice in Fact' by the pronouncements of the Apex Court. 'Malice in Fact' means corrupt motive or malicious intention. 'Malice in Law' has, however, been defined in the case of Smt. S.R.Venkatraman Vrs. Union of India, reported at AIR 1979 SC 49 in the following words :

"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."

Shri K.Padmanabhaiah had always considered the officer as an outstanding officer and it was he who had sponsored his name for promotion as IG and for posting as IG, CISF at Patna in January, 1996. Till that time he had never thought that continuance of this applicant at Patna was undesirable. However, he suddenly changed his stand in June, 1996. Reasons for this, therefore, could only be presumed that reason could be a pressure from some quarter and that some quarter happened to be Shri Mohd.Taslimuddin, the MOS[H] who assumed the charge of the Ministry on 2nd June, 1996. Thus, there is an unmistakable conclusion that Shri Padmanabhaiah, the Home Secretary acted with Malice in Law. One may also take note of the submissions of the learned counsel for the applicant that Shri Padmanabhaiah is due to superannuate on 31st October, 1996 and this action was his quid pro quo for post retirement employment in some important job.

30.2 But why was Mr. Taslimuddin wanting the repatriation of this applicant from Patna ? In his written statement he has stated that he has no personal acquaintance with the applicant and he might have met the applicant at some public meeting but that casual

31. I wanted to keep clear out of this quagmire of press statements made by the Respondent no.4, Shri Laloo Pd. Yadav, which were also telecast through the ^{alleged to be}

DD Network on the simple grounds that Shri Laloo Pd. Yadav had categorically denied having made those statements and he had no locus-standi as the ~~Tanta Dal~~ President to dictate any orders to the Union Home Ministry. The Tribunal is required to peruse the documents under Section 22[~~ii~~]^g and written representation and oral arguments and is not supposed to see the audio-video cassettes or tape-records which are corroborative evidences. In the case of Shri Pratap Singh Vs. State of Punjab, reported at AIR 1964 SC P.73 onwards, it was held by the majority of Hon'ble Supreme Court that the evidence afforded by the tape-recorded talk had to be considered in appreciating the genuineness of the talks recorded and in deciding whether the allegations made by the petitioner were substantiated or not. It has been held in catena of judgments of the Hon'ble Supreme Court that the Tribunal is not a Court of Appeal or a Court where evidences can be established or appraised. This is a Court for judicial review wherein only the averments, documents and oral arguments are taken into consideration for adjudication. Shri Laloo Pd. Yadav through his statement has made complete denial of the allegations against him. However, he has at no time indicated that he tried to refute the press statements attributed to him by leading newspapers of this country whose clippings have been submitted by the applicant as a part of his application as also his rejoinders. At no point of time, Shri Yadav had sent a rejoinder to newspapers stating that the statements attributed to him are wrong and false. Without getting involved in this, I can hardly brush off the allegations that certain dis-paraging remarks were made by Shri Laloo

Pd. Yadav through Press Conference which got very wide publicity and has hurt the reputation of the application and his personality has been bruised irreparably. A mere denial through a written statement cannot undo the wrong done to him. I am very much inspired by the observation of a learned Single Judge of the Kerala High Court in the case of P.Pushpkaran, Vrs. Chairman, Coir Board, Kerala, cited at 1979 [1] SLR P.309, wherein he held the view that "the right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may at time, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist, or a stormy petral. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. In order to get the bottom of the facts, I had leniently permitted repeated submissions of statements and rejoinders followed by rehearing of this case on 29.08.1996 so as to enable all the parties to have their side of matter brought to my notice and conclusions based thereon. This has paid off well and I am now able to churn out conclusions which confirm my initial suspicion that the transfer order was not very transparent. I hold that the transfer order passed by the respondents no. 1 & 2 was in violation of the statutory rules and executive instructions and was arbitrary, ordered on extraneous factors. It also suffers from malafide, motivated by malice in law on the part of the respondent no.3, Shri Mohd.Taslimuddin

The then MOS (H) and respondent no.5, Shri K. Padmanabhaiah, the Home Secretary. The malice in law in the minds of these two respondents was the result of insidious influence over them of respondent no.4, the President of Janta Dal and the Chief Minister of Bihar, Shri Laloo Prasad Yadav.

O R D E R

32. In view of the above, I hereby quash the impugned telegraphic transfer order dt. 2nd July, 1996, with the direction that the applicant shall be allowed to complete his notified tenure at Patna in his present job as IG, CISF. However, this shall not preclude the Respondents from repatriating him to his parent cadre if that is warranted by any exigency of service or in larger public interest.

33. No orders as to costs.

N. K. Verma
(N. K. Verma)
Member (A)