IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 863/98 and 866/98

Thursday the 11th day of March 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Mrs. P.J. Naik
residing at
10/3, Shivsagar
Society, Shivmandir Road,
Dombivli(East) ... Applicant in O.A.863/98.

Mrs. S.A. Mohite
residing at
Navkshitij Apartment
B-202, Barave Road,
Khadakpada, Kalyan (West) ... Applicant in O.A. 866/98.

By Advocate Shri V.G.Rege alongwith Shri T.D.Ghaisas.

V/s.

Union of India through
The Secretary to Government
of India, Ministry of Commerce,
Dept. of Supply, New Delhi.

Director of Supplies (Textiles)
New C.G.O. Building,
6th floor, New Marine Lines
Mumbai. ... Respondents.

By Advocate Shri R.R.Shetty for Shri R.K. Shetty.

Commandant
Central Ordnance Department
Kandivali (East)
Mumbai. ... Respondent no.3 in O.A. 863/98.

Sr. Staff Officer
(Civilian Personnel)
Head Quarters,
Western Naval Command
Shahid Bhagat Singh Road,
Mumbai. ... Respondent no.3 in O.A. 866/98.

By Advocate Shri V.S.Masurkar.

O R D E R (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

These are two applications filed by the two applicants working in the department of Supply challenging the orders of transfer to the office of respondent No.3 in both the O.As. The respondents have filed reply opposing the applications.

2. I have heard the learned counsel for both sides regarding admission and interim relief.

3. Both the applicants are working in the Department of Supply at Bombay. In O.A. 863/98, by the impugned order the applicant has been transferred to the office of Commandant, Central Ordnance Department, Kandivali, Bombay. In O.A. 866/98 the applicant has been transferred to the office of Sr. Staff Officer (Civilian Personnel) Head Quarters, Western Naval Command, Bombay. Both the applicants being aggrieved by the impugned orders of transfer have approached this Tribunal challenging the orders of transfer on many grounds.

The respondents in their reply have justified the orders of transfer being in public interest and in administrative exgencies.

4. The main arguments of the learned counsel for the applicant is that the applicants being employees of Department of Supplies cannot be transferred to the Department under the Ministry of Defence. They have also challenged the orders of transfer on the ground of malafidey etc.

Respondents contention is that by the policy decision of the Cabinet, certain posts were transferred from the Department of Supplies to Ministry of Defence. In persuance of that decision certain posts alongwith the officials were transferred. It appears that the officials who came on transfer with the post were given option for merger. Since the officials did not agree for absorption they were sent back to the parent department. By way of replacement the two applicants are being transferred to two different departments.

5. In may view the question of transfer on the ground of policy decision of the Government of India cannot be aggitated or alleged in the present O.A., since the scope of the present O.A. is very limitted. If the applicant wants to challenge the policy decision, they have to file proper application with proper pleadings and proper documents. I cannot go into the question to decide about the correctness or otherwise of the policy decision of the Government of India.

6. In view of the policy decision certain posts have become surplus in the department of Supplies due to de-centralisation. Now the posts alongwith official were transferred to the concerned department. If on such a policy certain official sent to the Ministry of Defence and on the basis of option given to them they came to the Parent department that order of transfer to replace them is not contrary to rules.

7. In fact in one of the cases namely O.A. 863/98 one Shri M.S. Masurkar had been transferred alongwith post to the Ordnance Factory and since he was not willing for absorption he was sent back to the Parent department. He approached this Tribunal by filing an application, O.A. 1061/97. By order dated 9.9.1998 a Division Bench of this Tribunal directed the administration to re-patriate Shri M.S. Masurkar to the parent department and if necessary a junior employee could be transferred in his place. Now the administration has taken a stand that Shri M.S. Masurkar has come back on repatriation and Smt. P.J. Naik, the applicant in O.A 863/98 is being transferred under the impugned order of transfer. As far as pther case is concerned one Smt. V.N. Lonandkar had come to the parent department and the post was vacant. Now the department is sending Smt. Mohite on transfer.

8. I find that the impugned order of transfer has been issued on the administrative exigency and therefore it is not open to challenge the transfer order under Section 19 of the Administrative Tribunals Act. The Supreme Court has laid down in many of the decisions that orders of transfer cannot be interfered. In the present case I am not satisfied about the applicant's allegation that the transfer order is contrary to Statutory Rules or orders being malafide. If the applicants are still aggrieved by the order of transfer based on policy decision and the policy decision itself is illegal then they have to take appropriate steps as per law. It is also

brought to my notice that both the applicants have been relieved on 13.10.1998. Therefore it is for the applicants to obey the order of transfer and join the post. This order will not come in the way of the applicant's right to challenge the policy decision and consequent order of transfer on any legal ground according to law. Therefore, I find that no case is made out for admitting both the O.As or for grant of any interim relief in favour of the applicants.

9. It is now brought to my notice that both applicants came to be relieved on 13.10.1998. They have not yet joined their new posting, may be because the O.As are pending and there was an order of status quo to be maintained. The learned counsel for the applicant submits that both the applicants have given proper leave applications in their parent department with medical certificate, but no orders have been passed. Shri Shetty, the learned counsel for the respondents 1 and 2, states that his department could not take any action on the leave application, since the applicants have been relieved. It is the duty of the applicants to report to the new post and submit their leave application. He further submits that his department has no objection to send the leave application and other documents of the applicats to the department where they were posted. Liberty to the applicants to make proper application for grant of leave or otherwise regularisation of absence from 13.10.1998 till the date of joining as per rules. In the

meantime the department of Supplies to send the leave application of the applicants alongwith other documents to the department where the applicants ~~were~~ are transferred. On such applications filed by the applicants, respondent No.3 in both case to consider and pass appropriate order according to the Rules.

10. In the result both the applications are disposed of at the admission stage. No costs.

(R.G.Vaidyanatha)
Vice Chairman

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