

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 589 of 2005

Original Application No. 590 of 2005

Original Application No. 591 of 2005

Jabalpur, this the 6th day of July, 2005

Hon'ble Shri Madan Mohan, Judicial Member

1. **Original Application No. 589 of 2005 :**

Vazir Khan, S/o. Shri Nazeer Khan,
Aged about 34 years, R/o. House No. 887,
Behind Seth Natthumal School, Gorakphur,
Jabalpur.

.... Applicant

2. **Original Application No. 590 of 2005 :**

Indrajeet Das, S/o. late M.S. Das,
Aged about 33 years, R/o. Kailash Dham,
Vardha Ghat, Khamaria, Jabalpur.

.... Applicant

3. **Original Application No. 591 of 2005 :**

Rajkumar Choubey, S/o. Shri Hari
Prasad Choubey, aged about 50 years,
R/o. Shivaji Ward, Panagar, Distt. Jabalpur.

.... Applicant

(By Advocate – Shri S. Paul in all the OAs)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Defence,
New Delhi.

2. The Chairman/Director General Ordnance
Factory Board, 10-A, SK Bose Marg,
Kolkata.

3. The General Manager, Ordnance
Factory, Khamariya. Respondents in
all the OAs

(By Advocate - Shri S.A. Dharmadhikari in all the OAs)

Common O R D E R

As the issue involved in all the aforementioned cases is common and the facts and grounds raised are identical, for the sake of convenience these Original Applications are being disposed of by this Common order.

2. By filing these Original Applications the applicants have claimed the following main reliefs :

“(ii) set aside the order dated 17.6.2005 (Annexure A-1 in all the OAs) and order dated 10.5.2005 (Annexure A-2 in all the OAs) with all consequential benefits as if the impugned transfer order has never been issued,

(iii) direct the respondents to keep applicant posted at the present place of posting i.e. Ordnance Factory Khamaria, Jabalpur.”

3. The brief facts of the cases are that the applicants were initially appointed as Darbans on 26.2.1997, 8.10.1992 & 1.5.1978 respectively in the Ordnance Factory, Khamaria, Jabalpur. Vide orders dated 10.5.2005 (Annexure A-2) they have been transferred to Ordnance Factory, Varangaon, Varangaon and Bolangir (Orissa) respectively. These orders are non-speaking orders. Darban is a Group-D post and Group-D employee is normally not transferred from one factory to another and the seniority of the Group-D employee is maintained at the factory level. If they are transferred to other factories then their seniority will be adversely effected and the chances of their promotion will also be prejudiced. By the present transfer orders the family of the applicants shall face acute problem. The applicant in OA No. 589/2005 is having a handicapped mother who is unable to walk independently, two marriageable sisters, one younger brother and his 3 daughters out of which two are studying. The applicant in OA No. 590/2005 is having his mother with him who is a heart patient and her left side is paralyzed. The applicant in OA No. 591/2005 is suffering from Blood Cancer and his son has met with an accident and has fractured his left leg. Presently, his son is not in a position to move or walk. With regard to their transfer the applicants have

(D)

preferred representations and when it was not considered and decided they have filed OAs Nos. 477/2005, 476/2005 & 475/2005 respectively. The Tribunal vide orders dated 13.5.2005 directed the respondents to decide the representations of the applicants. The respondent No. 2 has rejected the representations of the applicants on 17.6.2005 (Annexure A-1 in all the OAs) without any authority and jurisdiction to decide the same. The respondent No. 1 should have decided the representations of the applicant. While decide the representations of the applicants the respondent No. 2 has not mentioned any administrative exigency or public interest under which he was compelled to pass such orders. These orders are apparently illegal and hence, these Original Applications are filed.

4. Heard the learned counsel for the parties and carefully perused the pleadings and records.

5. The learned counsel for the applicants argued that the applicants were initially appointed as Darbans in Ordnance Factory, Khamaria, Jabalpur. Vide transfer order at Annexure A-2 in all the OAs they have been transferred to Varangaon, Varangaon and Bolangir (Orissa) respectively. It is also argued on behalf of the applicants that the earlier order at Annexure A-2 in all the OAs were passed by the Director General of Ordnance Factories and the present impugned order at Annexure A-1 is also passed by him. The same authority should not have passed the orders while considering the representations of the applicants filed in compliance with the orders passed by the Tribunal in the aforesaid OAs. Other senior authority should have considered the representations of the applicants. He further argued that the applicants have submitted representations to the Secretary, Ministry of Defence, Government of India, New Delhi and not to the Director General of Ordnance Factories. The employees of Group-D are never transferred to any other factory/organization and the respondents have not shown any administrative exigency or any public interest in transferring the applicants. My attention is drawn towards the

judgment of the CAT, Principal Bench in the case of Shri Harpal Singh Kashyap Vs. Government of NCT of Delhi and Ors., 2005(2)ATJ 125. He also submitted that the seniority of the applicants will be effected if they join the transferred station because the seniority of the Group-D employees are maintained in factory level. The family circumstances of the applicants were not considered by the respondents while passing the impugned orders. My attention is also drawn towards the order of the CAT, Ernakulam Bench in OA No. 484 of 1993 - Y. Kurikesu Vs. Senior Superintendent of Telegraph Traffic, Trivandrum Division and others, decided on 28.10.1993. In this order the term public interest is well defined. Further he has drawn my attention towards Annexure R-3 in all the OAs which is a letter filed on behalf of the respondents issued from the Ministry of Defence. In this letter it is mentioned that "[I]n this connection, it is observed that the issue involved therein pertains to inter-factory transfer which is an administrative action. OFB is, therefore, advised to issue the speaking orders after obtaining approval of Chairman/DGOF duly verifying the facts from their records available at their end". It is addressed to the Director/LC, Ordnance Factory Board, Kolkata. But the impugned orders at Annexure A-1 in all the OAs is passed with the recommendations of the Senior General Manager, Ordnance Factory, Khamaria, Jabalpur as is mentioned in its paragraph 'D'. Hence, these impugned orders at Annexure A-1 in all the OAs are passed in violation of the aforesaid letter at Annexure R-3 in all the OAs. Thus, the action of the respondents is apparently against the rules and law and is nullified.

6. In reply the learned counsel for the respondents argued that there is no bar in deciding the subsequent representations of the applicants by the same authority under any rule. The orders passed on the subsequent representations of the applicants are perfectly legal, justified and within the jurisdiction of the authority who passed it. He further argued that the Tribunal has not directed the respondent No. 1 only to decide the

representations of the applicants. He also argued that normally the Group-D employees are ~~normally~~ liable for service in the same factory or office in the Ordnance Factories organizations, but this will be without prejudice to the right of the management in the public interest to transfer them to equivalent posts in any other factory or office in the Ordnance Factories organization. The applicants Vazir Khan and Raj Kumar Choubey have been penalized on several occasions. The seniority of the applicants shall not be adversely affected on account of this transfer because their seniority shall be considered from the date of their appointment and not from the date of their joining in the new place of posting. He further argued that in the appointment letters of the applicants it is clearly mentioned that they could be transferred from time to time in any of the Ordnance Factory organizations around the country and had accepted the appointment on this ground. The applicants cannot take the benefit of the letter Annexure R-3 in all the OAs as this fact is not pleaded in their Original Applications. No irregularity or illegality has been committed by the respondents while passing the impugned orders. He has also drawn my attention towards the judgments of the Hon'ble Supreme Court in the case of Gujarat Electricity Board & Anr. Vs. A.S. Poshani, 1989(10) ATC 396, wherein the Hon'ble Supreme Court has held that "Service Law – Transfer of employee – An incident of service – Employee has no right to be posted at a particular place – Transfer cannot be evaded merely on ground of pendency of representation or difficulties". Further in the case of National Hydro Electric Corporation Ltd. Vs. Bhagwan Shukla & Ors, 2001(8) SCC 574 the Hon'ble Supreme Court has held that "Service Law – Transfer of employee – Nature of, and scope of judicial review of such transfer – Transfer of employee, held, is not only an incident but a condition of service – Unless shown to be an outcome of malafide exercise of power or violative of any statutory provision, held, not subject to judicial interference as a matter of routine – Courts or tribunals cannot substitute their own decision in the matter of transfer for that of the management". In another case of Union of India & Ors. Vs. Shri

Janardhan Debnath & Ors., 2004(4) SCC 245 the Hon'ble Supreme Court has held that "Service Law – Transfer – Administrative grounds/Public interest – Question whether transfer in a particular case was in the interest of public service, held, requires factual adjudication – Examination of that question by High Court in its jurisdiction under Arts. 226 & 227, impliedly disapproved".

7. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records I find that the Group-D employees are not transferred to other factory/organizations in normal course. But in public interest the respondents can exercise the power of transfer according to rules. I have perused the order of the CAT, Principal Bench in the case of Shri Harpal Singh Kashyap (supra) and I find that the Tribunal has observed that "[T]ransfer – When the issue of administrative exigency is raised before the Court it is mandated upon the respondents to explain the exigency and the circumstances under which a deviation from the rule has been taken to transfer an employee". The respondents have not mentioned the circumstances in the impugned orders under which they have deviated the normal rule of transfer in the case of Group-D employees i.e. the applicants. On further perusal of the judgment of the Principal Bench I find that the argument of the learned counsel for the applicants that in the judgment of the Principal Bench mentioned above the Tribunal has considered all the rulings cited above by the learned counsel for the respondents, is correct. I further find that in OA No. 589/2005 admittedly the applicant was penalized with minor penalty in the year 1999 and 2000 i.e. before 5 years the impugned order is passed. In OA No. 591/2005 the applicant was penalized latest in the year 1998 i.e. before 7 years the impugned order is passed. The argument of the learned counsel for the respondents that hardships always arise in the case of transfer from one place to another and the employee cannot take the benefit of this, seems to be legally correct. I also find that the respondents have submitted in their replies that since the transfer has been done in

public interest on administrative ground, the seniorities of the applicant would not be disturbed and would be counted from the date of joining in service as Darban and not from the date of posting to the new factory. Hence, this fact also does not adversely affect the applicants. Further I have perused Annexure R-3 in all the OAs which is issued from the Ministry of Defence addressed to the Director/LC, Ordnance Factory Board, Kolkata. In this letter in paragraph 2 it is mentioned that "[I]n this connection, it is observed that the issue involved therein pertains to inter-factory transfer which is an administrative action. OFB is, therefore, advised to issue the speaking orders after obtaining approval of Chairman/DGOF duly verifying the facts from their records available at their end". I also find that in paragraph 'D' of the impugned orders it is mentioned that the recommendations of the Senior General Manager, Ordnance Factory, Khamaria, Jabalpur has been considered while in the aforesaid letter at Annexure R-3 in all the OAs it was mentioned that the speaking orders should have been issued after obtaining the approval of Chairman/DGOF duly verifying the facts and records available at their ends. This letter of the Ministry of Defence is not complied with by the respondent No. 2 & 3 while passing the impugned orders. Hence, the argument of the learned counsel for the respondents that this fact is not pleaded in the OA and it is a new fact is not legally correct as they have only filed Annexure R-3 in all the OAs with their replies and it was their duty to comply with the said order at Annexure R-3 in all the OAs.

8. Considering all the facts and circumstances of the case, I am of the considered opinion that the impugned orders are liable to be quashed and set aside. Accordingly, the impugned orders dated 17.6.2005 (Annexure A-1 in all the OAs) and 10.5.2005 (Annexure A-2 in all the OAs) are quashed and set aside. Further the respondent No. 1 i.e. the Secretary, Ministry of Defence, New Delhi is directed to reconsider the representations of the applicants, within a period of two months from the



date of receipt of a copy of this order, by passing a speaking, detailed and reasoned order and also keeping in view the observations made above.

9. In view of the discussions made above, all the Original Applications are disposed of in the above terms. No costs.

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 (Madan Mohan)
 Judicial Member

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पूछांकन से ओ/न्या जवलपुर, दि.....
 प्रतिलिपि वाये रिहा
 (1) सचिव, उच्च न्यायालय वा उच्च न्यायालय, जवलपुर
 (2) आदेशक श्री/मीमांसा/कुमा... वा काउंसल
 (3) प्रत्यार्थी श्री/वीराजी/कुमा... के काउंसल
 (4) न्यायपाल, वोक्साइ. जवलपुर न्यायपीठ
 सुचना एवं आवश्यक कार्यतात्त्वी हेतु
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