

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH

O.A.NO.060/00794/2018

Orders pronounced on: 06.09.2018  
(Orders reserved on: 08.08.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &  
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)**

Krishan Kumar, age 40 years,

son of Shri Mangal Chand, Supervisor (NT/OTS) (Group C),

Ordnance Cable Factory,

Plot No. 183, Industrial Area, Phase-I,

Chandigarh-160002.

Applicant

By: **MR. SAPAN DHEER, ADVOCATE.**

Versus

1. The Director General of Ordnance Factories-cum-Chairman,  
Ordnance Factory Board, Ayudh Bhawan, # 10A, S.K. Bose Road,  
Kolkata-700001.
2. The Addl. Director General of Ordnance Factories & Member,  
Armoured Vehicles HQ, Avadi, Chennai-600054.
3. The General Manager, Ordnance Cable Factory, Plot No. 183,  
Industrial Area, Phase-I, Chandigarh-160002.
4. Shri Laxmidhar Mohanty, General Manager, Ordnance Cable  
Factory, Plot No. 183, Industrial Area, Phase-I, Chandigarh-  
160002.
5. Union of India through its Secretary, Ministry of Defence, South  
Block, Nirman Bhawan, New Delhi-110011.

By: Mr. Ram Lal Gupta, Advocate

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Respondents

*(O.A.No. 060/00794/2018-  
Krishan Kumar Vs. UOI etc.)*

**ORDER**  
**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of impugned order dated 3.7.2018 (Annexure A-7) and letter dated 22.3.2018 (Annexure A-5), vide which he has been transferred from Chandigarh to Muradnagar.

2. The facts of the case, which led to filing of the O.A., and as projected by the applicant, are that initially he was appointed as Durwan and then promoted as LDC on 18.1.2012 and now he is working as a Supervisor, having been promoted on 1.4.2013, in the Ordnance Cable Factory (OCF), Chandigarh. He claims that his work is satisfactory and he has a clean record as there is no complaint, whatsoever, against him. He claims that he is a Whistle Blower. Since OCFC officers illegally started bungling, he filed complaint against them to his superiors as well as Central Vigilance Commission (CVC), New Delhi, including complaint dated 25.8.2016, regarding misuse of authority in procurement of material, in violation of rules and extending undue benefit to M/s Satyam Engineers, Chandigarh, to the tune of Rs.10,06,992/-. It was followed by another complaint to CVC regarding undue benefit to M/s Payal Mechanical & Engg. Works, Chandigarh. He also filed a RTI Application dated 2.12.2016 regarding use of unofficial/illegal email ID i.e. ocfc.ofb@gmail.com for procurement related work. The use of this email for invitation of quotation was against public interest. He claims that upon coming to know of this complaint, Respondent No.4 called the applicant in his office on 31.12.2016, harassed, abused and threatened him to throw out of the factory and used derogatory, defamatory and unparliamentarily

language. He was transferred from Procurement Section to HRD & WD Section, vide order dated 2.1.2017. He was again harassed, victimized and threatened by respondent no. 4 on 8.3.2017 for disclosing corrupt practices of higher officers.

3. The applicant further submits that he filed a complaint to CVC registered on 24.5.2017. He was called in Conference Hall on 2.5.2017 and harassed by respondent no.4 by use of derogatory language. His ACRs for the years 2015-16 and 2016-17 had been down-graded, without any justification and upon submission of representation dated 2.1.2017, same were upgraded. He filed another complaint dated 14.8.2017 to CVC against willful misuse of power and authority by OCFC officers in conducting All India Trade Test / Examination of Trade Apprentices by violating the rules / instructions / orders on 14.8.2017. The Chandigarh Police also asked him to give his statement with evidence which he did vide letter dated 24.12.2017. However, again he was insulted by respondent no.4 on 30.12.2017 in his office. He again made a complaint to CVC on 1.1.2018 against act and conduct of respondent no.4, which is under investigation. He submitted his comments to Director (Vigilance) (North West), Camp Office, in which it was found that Respondent no.4 and Sh. Rajnish Kumar, had fraudulently generated a false document in back date for fixing the applicant. The applicant forwarded a complaint dated 28.2.2018 regarding aforesaid examination. Respondent No.4 became prejudiced against the applicant and wrote a letter dated 22.3.2018 (Annexure A-5), to the Addl. DGOF & Member, Armoured Vehicle HQ, Avadi, Chennai-600054, recommending his transfer from Chandigarh. The applicant made a representation dated 22.4.2018 to Secretary, OCF, Kolkata, against letter dated 22.3.2018. He also submitted his statement along

with evidence and supporting documents against respondent no.4 and investigation is under process. Despite the fact that the investigation against respondent no.4 is under process by CVC on various complaints, the authorities have passed impugned order dated 3.7.2018 (Annexure A-7), transferring the applicant as a measure of punishment to Muradnagar and he has also been relieved, which is in violation of policy guidelines, Annexure A-8 and he will suffer loss in seniority. Hence, the O.A.

4. The respondents have filed a joint written statement. They submit that there will not be any loss in seniority to the applicant on joining at Muradnagar. The applicant has placed reliance on transfer policy, Annexure A-8, which is in regard to Request Transfers and not for regular / normal transfer orders. He is liable to be transferred throughout the country, in terms of his appointment letter, Annexure R-1. He is working since 30.11.2004, at present place, i.e. for the last more than 13 years. They have also placed reliance on various judicial pronouncements of Hon'ble Apex Court to claim that courts should be slow in interfering in transfer orders. The applicant has been transferred in public interest and not as a punitive action as his home town is in Bhiwani, which is nearer to Muradnagar. The applicant was awarded in the year 2011, when he was found fit for the same. The respondents have no knowledge of complaints of applicant to CVC. He is not taking interest in the area of his work and makes allegations against Head of Section and superior officers. He is also in habit of taking frequent leave and whenever he is advised to improve, he tends to make allegations against his superiors. The OCFC has only on e-mail, which is used for official purposes.



5. It is submitted that the applicant was called and only counseled to work in true spirit in the interest of organization but he indulged in making more allegations and even lodged complaint to the Police also. He was transferred from Procurement Section to HRD & WD, with his consent as he failed to discharge his duties in a time bound manner. He is in habit of making false complaints against higher officers. His claim that GM/OCFC is shielding corrupt elements, is totally unfounded and denied. His ACRs grading were improved, on filing of a representation by him. Respondent no.4 had submitted his version to Police Authorities (Annexure R-2). A meeting was called to apprise officials about clandestine mobile recording of official communication by applicant. This had come to notice of GM/OCFC when SHO, PS, Industrial Area-I, Chandigarh, approached him in connection with complaint of applicant, when he produced mobile recording. Such an act of the employee towards the HOD was a revelation to the GM/OCFC., Thus, he thought it appropriate to advise PV officials for taking suitable precautions while dealing with the applicant. Procurement being a sensitive section, only objective to call the meeting was a caution to the officers of the PV Section and incidentally the applicant was re-posted to PV section with a good intention of giving thrust to work in procurement section due to his past experience.

6. The respondents submit that it was found that instead of focusing on his assigned duties, the applicant was more interested in interfering in the other areas of procurement section with sole purpose of finding faults with others and projecting procurement section in a bad light. He is in habit of using his time and energy in a negative way at the cost of government work. He had developed persecution complex over a period of time. In the past also he has indulged in activities detrimental to the

interest of organization. He has violated standing security instructions by using recording devices inside the factory, a defence establishment for which he has been cautioned. By indulging in recording, he has indulged in violations of CCS (Conduct) Rules and unbecoming of a government servant. He has mentioned about threat to his life in OCFC. He is in habit of claiming harassment, victimization, torture and defamation. After an argument with Head of Section, he went to Police Authorities that he was physically assaulted. He was assured that factory provides safe and secure working environment to all employees and he was advised to report for duty and he did comply with it. But again he started claiming that there was threat to his life. It was, thus, proposed to transfer him to any other nearby factory and as such he was transferred to a place where he can serve without any fear. It is not as a measure of punishment but in public interest. The applicant has filed a replication reiterating the submissions made in the O.A. with some other documents, including C.Ds.

7. We have heard the learned counsel for the parties at length and examined the pleadings on file with their able assistance.

8. The learned counsel for the applicant, with some amount of vehemence, has challenged the impugned orders on the ground that same have been passed with malafide intention of respondent no.4 and as a measure of punishment and cannot be sustained in the eyes of law. In support thereof, he placed reliance upon the law laid down in the case of **SOMESH TIWARI VS. UNION OF INDIA & OTHERS**, 2009(2) SCC 592 (SC). He pleads that the post of Supervisor is unit level post and as such if applicant is moved out to a different factory, he will lose his seniority which is illegal. It is argued that since the applicant is a whistle blower, and made numerous complaints, he cannot be

transferred and is protected under The Whistle Blowers Protection Act, 2011. He has minor daughter of 6 years and is also suffering from keratoconus and treatment is going on in PGIMER, Chandigarh and GMCH, Sector 32, Chandigarh which would suffer, if applicant is shifted out. The learned counsel places reliance on decision of Hon'ble Apex Court in **INDIRECT TAX PRACTITIONERS ASSOCIATION V. R.K. JAIN**, 2010(8) SCC 281, to claim that whistle blower should be protected from unnecessary harassment. Reliance is also placed upon judgment of Hon'ble Madras High Court in the matter of **R. MOHANASUNDARAM VS. THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS** 2010(1) S.C.T. 586, to claim that transfer order not based on any administrative reason, and as a measure of punishment, cannot be sustained in the eyes of law. Then he pressed into service decision of Hon'ble Calcutta High Court in **SUKANTA MALLICK VS. UNION OF INDIA ETC.** 2013 (28) RCR (Criminal) 229, to claim that if transfer order is issued on misconduct on the part of the petitioner and other employees, then instead of transferring him or her, departmental action should have been taken. Similar is the position in **TARKESHWAR GIRI VS. UNION OF INDIA & OTHERS**, 2011 (21) RCR (Civil) 851, in which it was held that transfer order was issued as a punitive measure in the guise of interest of administration and as such it was not legally maintainable. In the case of **T. RAMAR VS. THE CHIEF ELECTORAL OFFICER AND PRINCIPAL SECRETARY TO GOVERNMENT, PUBLIC (ELECTIONS I), DEPARTMENT, SECRETARIAT, CHENNAI-6 AND OTHERS**, 2012 (2) CWC, 919, it was held that an order of transfer cannot be made as a punitive measure, though one can be transferred on administrative grounds and no reason need be stated. But in the guise of transfer of an individual on administrative grounds, arbitrary

exercise of such power cannot be allowed. He then furnished decision in the case of **P. KARUNAKARAN V. THE UNION OF INDIA (MADRAS) (DB)**, 2014 LIC 146, to claim that if an employee is transferred in lieu of punishment without conducting any enquiry or opportunity of hearing, it would be violative of principles of natural justice. Then he furnished decision in the case of **SHEIKH KALAM V. UNION OF INDIA** (Patna) (D.B), 2015 (4) SLR 78, to claim that if a transfer order is innocuous, but in substance and truth, is penal and stigmatic, it cannot be sustained in the eyes of law as no enquiry was conducted nor applicant was given any opportunity of hearing before passing the same. He also placed reliance on decision of C.A.T. Calcutta Bench, in O.A. No. 350/00450/2015 titled **SUBODH DEV VS. UNION OF INDIA & OTHERS**, decided on 24.3.2015, in which transfer of an employee, who was non gazetted and not having All India Transfer liability being below the post of Chargeman I, was set aside. These submissions were rebutted by learned counsel for the respondents on the basis of averments made in the written statement.

9. We have considered the submissions of respective counsels minutely.

10. The star argument, pressed into service, by learned counsel for the applicant is that since applicant is a whistle blower, so he has been transferred out, and as such orders are illegal and cannot be sustained in the eyes of law as applicant should be extended protection under the Whistle Blower Act, has to be rejected. One cannot deny the fact that the whistle blowers are given protection from harassment, but it is equally true that the applicant is not only claiming himself to be whistle blower but repeatedly complaining that there is threat to his life and security and it is on this basis, that the recommendation was made vide



Annexure A-5, that he should be shifted to some other nearby factory in his own interest as well as in the interest of smooth functioning of OCFC and on that basis, he was transferred out. In the background of this scenario, it cannot be said, from any angle, that the applicant has been visited with any penalty or he has been moved out due to malafide intentions. His complaints lodged with CVC have failed to prove anything levelled on those complaints and are said to be under investigation. It is also urged by respondents that the applicant has not been using his energy for performing his duties, rather making all sorts of allegations against the higher officers and as such he has been shifted to Muradnagar, where he can work fearlessly and devote his energy towards public interest. In these circumstances, we are not, at all, convinced to accept the plea taken by applicant that he has been victimized by the respondents or that he has been shifted out with malafide intentions. To us, the applicant appears to have been shifted out to ensure a cordial atmosphere in the factory.

11. The claim of the applicant that there is violation of the transfer policy, Annexure A-8, also falls to the ground for the simple reason, that the same relates to the On Request Transfers and not to general / routine transfers. Thus, he cannot take any benefit on the ground that there has been any non-adherence to Annexure A-8.

12. The plea taken by learned counsel for the respondents that the daughter of applicant is minor and is suffering from a medical problem, for which treatment is going on in Hospitals at Chandigarh, is a personal problem, which is to be seen by the respondents, and this Court, in exercise of its judicial power, cannot interfere in such issues, which are to be examined by the departmental authorities only, as per law.

13. In so far as the plea taken by the applicant that his seniority is going to be depressed on transfer to another factory is concerned, that also lacks any substance and merit as there is repeated assurance and pleading by the respondents including letter dated 30.7.2018 (Annexure A-10), that since the transfer of the applicant has been ordered in public interest, and as such the seniority of the applicant is to be protected in OFM. Thus, the plea of the applicant on this point has also to be and is hereby rejected.

14. The applicant has tried to project that the transfer order has been passed with malafide intentions and as such it cannot be sustained in the eyes of law. However, we find that there is no link between the complaints made by the applicant and the transfer orders issued by the authorities, as the main basis for shifting of the applicant is to maintain a congenial atmosphere for the applicant as well as the respondents and to ensure that the applicant feels safe at the work place as time and again he is feeling threatened at present place of posting and as such he has been shifted to Muradnagar, which can very well be termed to be in public interest and in exigency of service.

15. One cannot dispute that the interference in transfer matters at the hands by the courts of law has been well crystallized by now and it can be interfered only in certain circumstances like where the order is in violation of some statutory guidelines and is malafide or is ordered as a measure of punishment. If these elements are missing, then a Tribunal or court of law cannot interfere in transfer orders of the officials.

16. It is now well settled principle of law that malafide is very easy to allege, but difficult to prove as the onus to prove mala fide lies on the person who alleges it. The Hon'ble Apex Court in the case **State of**

**Punjab & Another Vs. Gurdial Singh & Others** (1980) 2 SCC 471

has ruled as under:-

"9. The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat..... that all power is a trust- that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action mala fides on fraud on power vitiates the acquisition or other official act."

17. The same view was reiterated by by this Tribunal in **BHAGWANT KAUR VS. UNION OF INDIA ETC.** [O.A.No. 060/00800/2016 decided on 16.2.2017.

18. In the instant case, the Competent Authority has transferred the applicant from Chandigarh to Muradnagar, on administrative grounds, and in public interest, after considering the fact that he is facing threat to his life and is not able to devote his energy words the work and to ensure congenial atmosphere in the Factory. Indeed, such transfer order cannot and should not be interferred with by the courts. A Government



servant holding a transferable post is liable to be transferred and he has no right to remain posted at one place or the other. Such transfer orders issued by the competent authority do not violate any legal right. If the courts continue to interfere with day-to-day transfer orders issued by Government and its subordinate authorities, there will be a complete chaos in the administration which would not be conducive to the public interest. This matter is no more res integra and is now well settled.

19. An identical question came to be decided by Hon'ble Supreme Court in case **SHILPI BOSE VS. STATE OF BIHAR** AIR 1991 SC 532. Having considered the scope of judicial interference in transfer matter, the Apex Court has observed as under:-

"4. In our opinion, the Courts should not interfere with a transfer order which is 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 mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the Competent Authority do not violate any of 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 instead affected party should approach the higher authorities in the department."

20. In the same manner, it was also held by Hon'ble Supreme Court in case **UNION OF INDIA V. S.L. ABBAS** 1993 (4) SCC 357 that who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it.

21. Also, a three-Judge Bench of Hon'ble Supreme Court in cases **MAJOR GENERAL J.K. BANSAL VS. UNION OF INDIA & ORS.** (2005) 7 SCC 227 and **STATE OF M.P. AND ANOTHER VS. S.S. KOURAV AND OTHERS** (1995) 3 SCC 20 has observed that the Courts



or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation.

22. In the case of **S.C. SAXENA VS. U.O.I. & OTHERS** (2206) 9 SCC 583, it was held by Hon'ble Apex Court that a Government servant cannot disobey a transfer order by not reporting back at the place of posting and then go to a court to ventilate his grievances. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.

23. Not only that, the same view was reiterated by Hon'ble Supreme Court **STATE OF U.P. VS. GOBARDHAN LAL** (2004) 11 SCC 402 wherein it was ruled as under:-

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

This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

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

24. Considering the principle of law as laid down by the Hon'ble Apex Court from time to time and peculiar facts of this case, as discussed hereinabove, we find that the reliance placed by learned counsel for the applicant upon the various decisions quoted above, is misconceived for a variety of reasons that he has not been transferred out as a measure of penalty nor on any misconduct. It is a transfer made in public interest and in interest of the applicant himself as he felt threatened at present place of posting and to provide him a sense of security, he has been shifted to Muradnagar, a place nearer to his home town. He has already served at present place of posting for the last more than 13 years. He cannot take benefit of immunity from transfer on the plea that he is a whistle blower. If such like pleas are allowed in a light hearted manner, then every employee would start filing complaints against higher officers and claim that he or she cannot be transferred as he or she is a whistle blower. In any case, the concept of protection to whistle blower, in the instant case, would not apply, as facts are altogether different. The applicant has been transferred to Muradnagar, but without any loss of

seniority being a public interest transfer and definitely as per order of appointment, Annexure R-1, he has all India transfer liability. So, for all these reasons and the law declared by Apex Court, the applicant cannot take benefit of decisions, relied upon by him.

25. In the backdrop of the aforesaid discussion and legal proposition, this O.A. is turns out to be devoid of any merit and is dismissed.

26. The interim order dated 11.7.2018 is vacated and M.A. No. 060/01063/2018 also stands allowed and disposed of accordingly. M.A. No. 060/01193 & 1195/2018 also stand disposed of accordingly.

27. The parties are, however, left to bear their own costs.

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**(AJANTA DAYALAN)**  
**MEMBER (A)**

Place: Chandigarh  
Dated: 06.09.2018

HC\*