

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.247/2017

Dated this Friday, the 9th day of June, 2017

**CORAM: HON'BLE SHRI A.J. ROHEE, MEMBER (J)
HON'BLE MS.B.BHAMATHI, MEMBER (A)**

Balchandra G.Devadiga,
Age 47 years, Son of
Gangadhar Devadiga
working as Stenographer-
Grade D in office of
Regional Director,
Mumbai (Under Transfer)
Residing at 45/2226
Gandhinagar,
Bandra (East),
Mumbai-400051.

Applicant

(By Advocate Shri S.V.Marne)

Versus

1. Union of India,
Through the Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung,
New Delhi-110001.
2. The Director General,
Bureau of Civil Aviation Security,
A Wing, I-III Floor,
Janpath Bhawan,
Janpath
New Delhi.
3. The Regional Director,
Bureau of Civil Aviation Security,
MIAL Project office,
Block-I,
Near New Terminal No.2,
Sahar Road,

Mumbai-400099.

4. Mr. Amarendu Manna
Assistant Director,
Bureau of Civil Aviation Security,
MIAL Project office,
Block-I,
Near New Terminal No.2,
Sahar Road,
Mumbai-400099. **Respondents**
(By Advocate Shri V.S.Masurkar)

Reserved on : 01.05.2017

Pronounced on : 09.06.2017

ORDER

Per : A.J. ROHEE, MEMBER (J)

The applicant who is presently working as Stenographer Grade 'D' in the office of the Regional Director, Bureau of Civil Aviation Security, Mumbai (R-3) (for short BCAS), approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs :-

"(a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned transfer order dated 12.04.2017 as well as the relieving order dt. 12.04.2017 with all consequential benefits.

(b) Costs of the application be provided for.

(c) Any other and further order as

this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed".

2. The applicant was appointed as Stenographer Grade 'D' on 13.7.1990 and was posted in the office of R-3. Since then, the applicant has completed 27 years of service on the same post for non-availability of promotional avenues. It is stated that the applicant unknowingly and unintentionally became the victim of strained relations between the Director General, BCAS, New Delhi (R-2) and the Regional Director, BCAS Mumbai (R-3). As a result of which on 12.4.2017 the applicant was served with the relieving order (Annexure-A-1) and was directed to report to the incharge BCAS, Ahmedabad (Gujarat) immediately. The transfer order on the same day was hurriedly issued thereafter for applicants posting at Ahmedabad with immediate effect.

3. According to applicant he has been illegally transferred from Mumbai to Ahmedabad and both the impugned order of transfer and

relieving him have been challenged by raising number of grounds including personal reasons causing hardship to him. The same are reproduced here from paragraph No.5 of O.A. in verbatim, for ready reference :-

(a) The impugned transfer order and relieving order dated 12.04.2017 is ex facie illegal, arbitrary, passed in colourable exercise of powers and deserves to be quashed and set aside.

(b) There is no provision for transfer of ministerial staff out of their respective Regional Offices. There is no transfer policy which envisages or regulates transfer of Ministerial staff. The policy of transfer has been formulated only for the officers working in the BCAS. A copy of said transfer policy for officers issued vide letter dated 8.3.2011 is annexed hereto and marked as **Annexure A-3**. The applicant is not governed by the said transfer policy.

(c) None of the ministerial staff in the Regional Offices of Bureau of Civil Aviation Security are liable for transfer and none have been transferred till date. Especially the

Stenographers' appointed and posted in the three other Regional Offices at New Delhi, Chennai and Kolkata have not been transferred out of their respective cities right from the date of their appointment. The applicant is thus singled out for hostile discrimination for no fault of his.

(d) The applicant does not have the longest stay amongst all the four Stenographers Grade 'D'. The Stenographers posted in Regional Offices at Kolkata and Chennai have been working at the same stations for more duration than the applicant. Therefore, if there was any exigency of service they ought to have been considered for transfer first.

(e) The impugned transfer order does not specify any reason for abrupt transfer of the applicant. The impugned order does not even say that the transfer is effective in public interest. This shows that there is no valid reason for transferring the applicant out of Mumbai.

(f) As pointed out hereinabove, the applicant is transferred on account of the strained relations between the Director General

and Regional Director, Mumbai with which the applicant has absolutely nothing to do. The decision to transfer the applicant is apparently taken on account of a mis-conception that the applicant was close to the Regional Director, Mumbai and was assisting him in the matter of his own transfer. This cannot be the reason for exercising power of transferring the employees.

(g) The power to transfer has not been exercised for the purpose for which the same is conferred on the Respondent No.2 and there is thus colourable exercise of power on the part of Respondent No.2.

(h) The transfer is not in public interest, but rather against it. No other Stenographer has been posted in place of the applicant at Mumbai. Thus, the Office of Regional director at Mumbai would be without any Stenographer. Most of the administrative work and some part of the operational work at Regional Office, Mumbai was being handled by the applicant. Without the applicant, the Regional Office, Mumbai would be left with just two Junior Clerks and

one Senior Clerk, who would not at all be able to handle the workload in absence of a Stenographer Grade 'D'. The applicant is in the grade pay of Rs.4600/- and the clerical staff in the lower grade pay are not expecting to discharge the duties and responsibilities which the applicant has been discharging for the last 27 long years. On the contrary, there is no requirement of a Stenographer at the Regional Office, Ahmedabad which is headed by a mere Assistant Director. The air operations at Ahmedabad airport are far lesser than and almost negligible as compared to Mumbai. Thus, the applicant is being shunted out from a place involving higher duties and responsibilities and posted at such a place where an experienced Stenographer like the applicant is not all needed. Even if it is assumed that a post of Stenographer has been sanctioned in the newly created Regional Office at Ahmedabad, Respondent No.2 ought to have recruited a fresh staff rather than punishing the applicant with transfer.

(i) The fact that relieving

order was issued on the same day of issuance of transfer order and relieving order was served before transfer order shows that the transfer is not routine and it was desired that the applicant should not continue at Mumbai even for a day. Till date, the transfer order dated 12th April, 2017 has not been served on the applicant and he has been given mere copy of it, that too on his insistence.

(j) The Impugned transfer order suffers from official malice. This is apparent from the fact the transfer order is deliberately timed during the absence of Regional Director, Mumbai. The Regional Director, Mumbai. The Regional Director, Mumbai was on sanctioned leave for 4 days from till 10.04.2017 to 13.04.2017. In normal course the transfer order could have reached Applicant from Delhi to Mumbai and the Regional Director would have relieved the Applicant after his return from leave. However the entire process was so hurriedly implemented that the same clearly smacks of official malice. The decision to relieve the Applicant was taken by the Assistant Director in

absence of the Regional Director. The Assistant Director directly asked the Applicant to sign in acknowledgement of the relieving order without even waiting for arrival of the hard copy of the transfer order dated 12.4.2017 at Mumbai. It appears that the Assistant Director merely received a copy of the transfer order on email, which he initially suppressed from the Applicant and directly sought to relieve him from Mumbai. In normal circumstances the Assistant Director ought to have waited for resumption of the Regional Director till Monday, 17.4.2017 for relieving the Applicant in pursuance of the order dated 12.4.2017. However deliberate hurry was shown for relieving the Applicant before the Regional Director could resume after end of his leave. The Applicant believes that the Assistant Director who hastily served the relieving order on the Applicant, did not take any guidance or instructions or approval of the Regional Director and rather deliberately kept him in dark about Applicant's transfer and relieving. The Respondent No.4 therefore must explain his conduct in

hastily serving the relieving order on the Applicant and the purpose behind doing so. Obviously the Respondent No.4 must have acted on the directives of Respondent No.2. But such conduct clearly show that the reasons behind Applicant's transfer is not bonafide and that the Applicant's transfer is clearly linked to the strained relations between the Respondent No.2 and Respondent No.3

(k) There was no need to show such great haste in relieving the Applicant. It is not that the post at Ahmedabad was required to be filled urgently on 12th April 2017 itself or that some one had arrived at Mumbai to take over the charge. In these circumstances the Respondents must explain as to why the Applicant was relieved on 12th April, 2017 even before the transfer order could be served on him.

(l) The applicant was rather looking forward for his promotion to the post of either Security Officer or Assistant Commissioner of Security and has been pursuing the same. At such juncture, the applicant is transferred as Stenographer out of Mumbai.

(m) The impugned transfer will cause severe difficulties for the applicant and his family. The applicant has one daughter aged 11 years and son aged 6 years. The applicant's daughter Soumya Devadiga has been diagnosed with developmental delays and is thus facing mental challenges. Copies of the relevant reports and certificate are annexed hereto and marked as **Annexure A-4**. The applicant is therefore required to take care of his daughter who cannot perform day to day activities on her own. Even at academic level, she is not able to cope up and is attempting to take education with great difficulties. Even at the age of 11 years she is not able to write properly and has been advised to be shifted to a Special School meant for Mentally Challenged children. The applicant's daughter unfortunately suffered from epileptic attack twice when she was 5 and 6 years old on account of which she is experiencing developmental delays. The applicant's daughter needs assistance even for use of toilet. It is therefore impossible for the applicant to leave his family

at Mumbai and work at Ahmedabad. The applicant's wife cannot alone look after both the children as well as aged parents of the applicant. The applicant's wife was diagnosed with tuberculosis in the year 2015 and is under medical treatment. A copy of Applicant's wife's certificate is annexed herewith and marked as **Annexure-A-5**. The applicant's father has been diagnosed with 100% and 70% blockages in the arteries in the year 2015 and has been advised not to undergo by-pass surgery due to his advanced age of 79 years. A copy of discharge summary of applicant's father dated 27.1.2015 is annexed hereto and marked as **Annexure A-6**. Therefore, on family grounds also the impugned transfer deserves to be quashed and set aside.

4. The applicant also seeks interim relief with a prayer to stay the effect, operation and implementation of the impugned transfer and relieving order and to permit him to work on the same post in the office of R-2.

5. On 18.4.2017 when the matter was taken up for admission Shri V.S.Masurkar, learned Advocate suo-moto appeared for respondents on

instructions received and has also filed a caveat. He seeks 7 days time to file reply. In view of this notice on OA was waived since Shri V.S.Masurkar accepted notice and five days' time was granted to file reply to O.A. for considering the prayer for interim relief.

6. In pursuance thereof, the respondents have filed a common reply on 23.4.2017 and denied all the adverse averments, contentions and grounds raised therein. It is stated that the applicant is working at the same place in Mumbai for the last 27 years. By the impugned order he is already relieved to join at the new destination. The applicant is a Group 'C' official and is liable to serve anywhere in India being Central Government employee. The respondents have neither violated transfer policy nor any of the service rules governing service conditions of the applicant. The O.A. is, therefore, liable to be dismissed.

7. In the reply itself, the respondents have cited and relied upon various judicial pronouncements on the issue of transfer of

Government employee, as mentioned in paragraph No.3, to mention in brief as follows :-

- (1) **State Bank of India v. Anjan Sanyal and Ors.** {2001 (3) SC 436};
- (2) **State of M.P. & Anr. S.S.Kourav & Ors.** {(1995) 29 ATC 553};
- (3) **Union of India v. S.L.Abbas** {AIR 1993 SC 2444};
- (4) **Kamlesh Trivedi v. ICAR & Anr.** {Full Bench Judgments (CAT) 1986-1989 80};
- (5) **N.K.Singh v. Union of India & Ors.** {(1994) 6 SCC 98};
- (6) **Union of India v. Janardhan Debnath** {AIR 2004 SC 1632-2004};
- (7) **S.C.Saxena v. UOI and Ors.** - {2006 9 SCC 583};
- (8) **Mohd. Masood Ahmed v. State of U.P.** {(2007) 8 SCC 150}; and
- (9) **Rajendra Singh v. State of U.P.** {2010 (1) SLR (SC) 633}.

8. The applicant's grievance is that he has been illegally transferred and relieved hurriedly on the same day by the respondent No.4 on the strength of the impugned order of transfer issued by R-2. It is not disputed that R-2 is the Competent Authority to issue the transfer order, although according to applicant he was not liable to be transferred

in the absence of guidelines/transfer policy for Clerical/ Ministerial staff working in various offices under the control of R-2 and that by the impugned order he was asked to work as Junior Clerk at BCAS Ahmedabad on the ground that no staff is available there. In this respect, it is stated that when the operation staff is available at Ahmedabad, which is treated as Technical Staff and hence it was absolutely necessary to place official well versed in the Ministerial/Clerical work and for that purpose the applicant was transferred, who is experienced hand in administrative work under R-3 since last 27 years. It is stated that the transfer will not affect the seniority or promotion prospects of the applicant.

9. It is stated that since the applicant is already relieved from Mumbai Office and is posted at Ahmedabad this Tribunal has no jurisdiction and CAT Ahmedabad Bench alone can entertain the grievance of the applicant regarding the said transfer. On this preliminary ground the O.A. is liable to be

dismissed.

10. The applicant's contention that his appointment is with the Regional Office of BCAS at Mumbai only and he is not liable to be transferred anywhere are baseless. This is so because the applicant was appointed by the Establishment Order dt. 28.8.1990 in a temporary capacity on the basis of his qualifying the Grade 'D' Stenographer's Examination, 1989 conducted by Staff Selection Commission of the Government of India. It is stated that any person appointed by following the due recruitment process, is said to be so appointed in the office of Government of India and as such he is Central Government Employee and hence such person is liable to be posted/transferred in any part of India, unless it is specifically stated in the appointment order or rules that he is not liable to be transferred. In the present case, there is no such service condition that the applicant cannot be transferred from Mumbai to any other Regional Office of BCAS. Hence, even in

absence of specific guidelines/transfer policy for Ministerial/Clerical Staff, the applicant is subjected to transfer especially when he is continuously working at one place since last 27 years. It is stated that the applicant had been transferred since recently the branch of BCAS was established at Ahmedabad and keeping in view the best interest of organization which also includes public interest. On this ground it is stated that even if no reasons are given in the impugned transfer order the same are implicit that transfer is on administrative grounds and in public interest too. Hence, the applicant should not have any grievance about the same.

11. It is stated that although the applicant is posted under Assistant Director, BCAS at Ahmedabad and he was attached to Regional Director at Mumbai, still it hardly makes any difference and it cannot be said that he was downgraded in rank. In this respect it is stated that after restructuring of BCAS, all the Reigonal Offices are headed by Regional

Directors and the said nomenclature does not differentiate between Joint Director, Deputy Director and Assistant Director, since any of them can be posted as Head of Department (HOD) at a particular Regional Office. It is also stated that as per the restructuring plan approved by the Ministry of Civil Aviation, 20 posts of Stenographer Grade 'D' have been approved and these are to be attached to the Assistant Directors. Hence, the applicant being Stenographer Grade 'D' is wrong in his contention that he cannot be posted at Regional Office headed by Assistant Director.

12. As regards filling of vacancies, it is stated that it is prerogative of the Competent Authority keeping in view the best interest of organization. Further, the process of filling of posts is time consuming since couple of authorities are involved in it. Recently one Mr.Rajesh Kumar, Junior Clerk who was posted in BCAS at Ahmedabad resigned from service and there being no other Ministerial staff posted there, the Competent Authority decided to post

one staff from the Regional Office, Mumbai to Ahmedabad to augment the staff strength. It is also stated that at present there are 4 Ministerial staff working in the office of Regional Director, Mumbai including the applicant, the other being one Senior Clerk and two Junior Clerks (Female). For this reason, the applicant being the best official for being posted, he has been transferred pending the process of recruitment of new staff. The administration will have to function and it cannot be hauled up and hence it was necessary to transfer applicant to Ahmedabad.

13. It is denied that the applicant's transfer has been effected as a result of strained relations between R-2 and R-3 and for the reason that he was assisting R-3 in day to day official work. No mala fides can be seen simply because accidentally the impugned transfer order has been issued when the respondent No.3 happened to be on leave. The applicant's contention that he should not have been relieved till the R-2 resumed duty is

unwarranted and baseless. Since R-2 has directed to relieve the applicant immediately, the R-4 issued the relieving order on its basis. Hence, both the impugned orders cannot be faulted.

14. It is stated that in past there have been instances where Ministerial Staff have been transferred from one Regional Office to the other based on the office exigencies. Smt.Kunti Lomaror, Jr. Clerk from the office of R-3 was transferred to Delhi and subsequently she was again re-transferred to Mumbai. Similarly one Mr.P.Ghosh, Sr. Clerk was transferred from Kolkata to Guwahati Regional Office. Hence, it cannot be said that the applicant alone was singled out/chosen for transfer to Ahmedabad.

15. It is stated that as per the laid down procedure, any aggrieved Government employee can submit an application to the Competent Authority through proper channel for redressal of his grievance. It is only after he has exhausted all the available channels of

redressal and if not satisfied with its outcome, he can then approach this Tribunal. As such it cannot be said that the applicant has exhausted all the remedies before coming to this Tribunal, especially when he has not submitted any representation to R-2 seeking modification of the impugned transfer order. Hence, the O.A. is premature and on this ground also it is liable to be dismissed.

16. In paragraph 21 of the reply a long list of as many as 13 citations/judicial pronouncements is given on the issue of transfer. We do not feel it necessary to reproduce the same here and some of the relevant decisions will be considered at appropriate stage.

17. On the aforesaid grounds it is stated that the O.A. is liable to be dismissed.

18. The respondent No.4 who has been joined in private capacity has by separate reply dt. 23.4.2017 denied all the allegations levelled against him in the OA. He has also stated that he has no prejudice for the

applicant and allegations of mala fides are not proved against him. He reiterated that he has only issued the relieving order on the strength of the transfer order issued by respondent No.2. The O.A. is, therefore, liable to be dismissed.

19. The applicant then filed a rejoinder to the reply on 26.4.2017 and denied all the adverse averments and contentions made in the reply by the respondents. He reiterated that the impugned transfer order is the result of the strained relations between R-2 and R-3 and he has been made a scape goat. It is stated that Shri Prahladhan, Steno Gr.'D' at Chennai is working there since last 32 years and hence he should have been considered for transfer having longest stay. He has also quoted the examples of Smt.Radha Rani, Sr. Clerk working at Mumbai since 29 years and the other clerical staff at Kolkata and Chennai Regional Offices viz. Mr.P.Ghosh, Sr. Clerk and Mr.N.Sampath, Sr. Clerk who have completed more service tenure than the applicant. Hence, according to

applicant he should not have been transferred having shorter tenure than others. It is stated that citations relied upon by the respondents have no applicability to the facts and circumstances of the present case and hence no reliance can be placed on it. Distinguishing the decision in a case of **S.C. Saxena** (*supra*), it is stated that it relates to determination of legality of punishment of compulsory retirement imposed upon the petitioner due to his absence from duty, which led to issuance of his order of transfer. He remained unauthorizedly absent which led to initiation of disciplinary proceedings against him in which penalty of compulsory retirement was imposed, since he failed to join even on his transfer. Hence issue of challenge to transfer order was not at all involved in that case. By casually quoting some stray observations from the said judgment, the respondents tried to mislead this Tribunal.

20. It is reiterated that the so called relieving order of the applicant is illegal and

mala fide action of R-4. It was also issued in the absence of R-3 and in a hurried manner for which no justification is given. This itself shows the strained relations between R-2 and R-3.

21. It is stated that the reason of non-availability of clerical staff at BCAS, Ahmedabad is totally misleading and false to the knowledge of the respondents. It is stated that the applicant is Gr. 'B' Officer drawing Grade Pay of Rs.4,600/-. Hence, the applicant should not have been posted in place of a Jr. Clerk whose Grade Pay is Rs.1,900/- only. Another Jr. Clerk or Sr. Clerk serving at Mumbai or any other Regional Office could have been transferred to Ahmedabad instead of the applicant. It is stated that there are about 12 Jr. Clerks and 4 Sr. Clerks in the organization of BCAS and hence, one of whom could have been transferred and posted at Ahmedabad.

22. It is denied that this Tribunal has no jurisdiction to entertain and consider the

present O.A. and CAT Ahmedabad Bench alone has jurisdiction. This is so, because his transfer order was passed when applicant was working at Mumbai and this Tribunal alone has jurisdiction. It is stated that as per the restructuring order dt. 4.2.2016 (Annexure-A-9) the Regional Office of BCAS headed by Assistant Director need not be provided with Steno Gr.'D' especially to replace a Jr. Clerk. The fact that BCAS, Ahmedabad has been able to operate with just one Ministerial staff that too of the cadre of Jr. Clerk, reflects the size of operations at Ahmedabad. It is also stated that the applicant's posting at Ahmedabad would result in depriving Regional Director, Mumbai in Grade Pay of Rs.7,600/- of a Steno and conferring Assistant Director, Ahmedabad drawing Grade Pay of Rs.5,400/- with a Steno in Grade Pay of Rs.4,600/-. For this reason also, the impugned order is liable to be set aside.

23. It is stated that Mr.Rajesh Kumar who was working as Jr. Clerk resigned from the said post on 18.10.2016 and hence thereafter BCAS

Ahmedabad has been without a Jr. Clerk for the last about six months. Hence, this clearly falsifies any urgency in transferring the applicant in a hurried manner. It is also stated that respondents have not given any justification as to how a Junior Clerk drawing Grade Pay of Rs.1,900/- can be substituted by Group 'B' Officer drawing Grade Pay of Rs.4,600/-. The respondents thus want that the applicant should perform the functions equivalent to one performed by Jr. Clerk. It is also stated that there is no sanctioned post of Steno Gr.'D' at BCAS, Ahmedabad. It is stated that there were only 8 sanctioned posts of Steno Gr.'D' out of which 3 were vacant and hence abolished w.e.f. 4.2.2016. Rest of the 5 posts are also required to be abolished after relinquishment of posts by present incumbents. It is also stated that 13 posts of Steno Gr.'D' to be attached to Assistant Directors are to be manned by Secretariat Stenos and not by BCAS Stenos. For this reason also the applicant cannot be posted at Ahmedabad.

24. In paragraph No.10 a list containing names of Sr. Clerks and Jr. Clerks with their period of service/tenure working at Chennai, Delhi and Kolkata is given. Some of whom have longest tenure than the applicant. It is also stated that as per the order dt. 4.2.2016 the post of Sr. Clerks and Jr. Clerks are also abolished and the said posts will be surrendered immediately after the present incumbents relinquish the charge. Hence, some Regional Offices are made will be manned without any Jr. Clerks/Sr. Clerks. It is stated that this is on a principle that other Technical Staff re-designated as Aviation Security Assistant, Senior Aviation Security Assistants, Deputy Aviation Security Officer and Aviation Security Officer can also perform Ministerial/Administrative functions. Hence, there is substantial increase in the revised strength of the above posts. For the above reasons, the contention that non-availability of Jr. Clerk at Ahmedabad, for justifying applicant's transfer as stated by the

respondents, is totally baseless.

25. So far as instances of strained relations between R-2 and R-3 is concerned it is also stated that the R-2 has transferred Shri B.S.Tiwari present Regional Director at Imphal and he has challenged the said order before this Tribunal in O.A. No.649/2016, in which the said order has been stayed. Another O.A. No.225/2017 is also filed by the said Shri B.S.Tiwari against R-2 for non-sanction of Tour Programme, Leave Applications, foreign Course for training etc.

26. So far as personal ground regarding illness of applicant's daughter is concerned, a reference to the DOPT's OM dt. 6.6.2014 (Annexure-A-11) granting special protection to Government Servants in the matter of transfer, on account of their children suffering from mental illness is made. Hence, for this reason the applicant being the caretaker of his daughter suffering from mental illness is not liable to be transferred, since she needs constant care. It is also stated that she

cannot speak properly and is undergoing treatment of speech therapy and occupational therapy and other medical treatment at Nair Hospital Mumbai. For the above reasons the impugned orders are liable to be set aside.

27. The respondents No.1 to 3 then filed reply to the rejoinder on 30.4.2017 and denied all the adverse averments, contentions and additional grounds raised therein. The stand taken in the reply is reiterated. Reliance was also placed on some more decisions in the matter of transfer of Government employees :-

(1) Gujarat Electricity Board and Anr. v. Atmaram Sungomal Poshani - {1989 2 SC 602};

(2) State of Madhya Pradesh and Ors. v. S.S.Kourav - {JT 1995 (2) SC 498}; and

(3) State of Rajasthan v. Anand Prakash Solanki {(2003) 7 SCC 403}.

28. It is stated that respondent No.3 was well aware about the impugned transfer order issued by the respondent No.2. For this reason it did not matter much when the applicant was relieved while respondent No.3 happened to be on leave. It is submitted that length of

service is not the only criteria to be followed while considering suitability for transfer of the Government employee. While effecting transfer, factors like experience, exposure to different types of work, analysing capability of the employee etc. are also taken into consideration. The above factors were taken into consideration while effecting the applicant's transfer. No mala-fides against any of the respondents are asserted or proved by the applicant. Hence, it cannot be said that the impugned transfer order is tainted with malice, when in fact, no malice has been alleged against respondent No.2. The action taken by respondent No.2 is in public interest and on administrative grounds, as stated earlier in the reply.

29. It is stated that the post of Assistant Director in BCAS is a Group 'A' post, whereas the applicant being Stenographer Grade 'D' is Group 'C' official. Hence, applicant should not have any hesitation to work under Group 'A' Officer at Ahmedabad. His contention

that he is drawing the same Grade Pay as that of Assistant Director is also incorrect. This is so, because the applicant has been granted the benefit of financial upgradation under MACP Scheme on completion of requisite number of years of service and hence although the Grade Pay drawn by him may be same as that of newly recruited Assistant Director, it cannot be said to be a promotional post.

30. As per restructuring plan the post of Stenographers will be abolished only on relinquishment or resignation or retirement of the present incumbents. Since the applicant has neither relinquished, nor resigned nor retired from his present post, it still exists and would continue till he submits resignation or retires from service. As such, it cannot be said that there is any difficulty for the applicant to join at Ahmedabad on the said post. On account of resignation by Mr.Rajesh Kumar, Jr. Clerk the said post stood abolished. However, there is no bar for posting the applicant as Stenographer Gr. 'D', who will

also look after the clerical job assigned to him by the Assistant Director, Regional Office, Ahmedabad. Since the process for fresh recruitment is going on the applicant cannot say that he is not liable to be transferred and only new incumbents on completion of recruitment process should be posted there. It is made clear that as per rules in case the applicant did not join at Ahmedabad and since he is already relieved he may face the disciplinary proceeding for failing to obey the orders and for insubordination. It is stated that since in past there are instances of effecting transfers of clerical staff, it cannot be said that no such policy exists and hence the applicant is not liable to be transferred.

31. So far as personal grounds raised by the applicant causing hardship to him on account of illness of his daughter, father and wife, he should have made a representation to the Competent Authority through proper channel rather than seeking recourse to legal

proceedings directly. The representation, if made, will be considered. The O.A. is therefore, liable to be dismissed.

32. Since pleadings were complete in this case, with the consent of learned Advocates for parties, instead of considering the matter for grant of Interim Relief, it was decided to hear it finally.

33. On 1.5.2017 we have heard Shri S.V.Marne, learned Advocate for the applicant and reply arguments of Shri V.S.Masurkar, learned Advocate for the respondents on merits of OA.

34. We have carefully gone through the pleadings of the parties, variou documents relied upon by them in support of their rival contentions. We have also perused the written submissions/notes of arguments filed by the applicant and also various decisions relied upon by the respondents in reply and sur-rejoinder.

35. We have also given our thoughtful consideration to the submissions advanced

before us by both the learned Advocates for the parties.

FINDINGS

36. The only controversy involved for decision of this Tribunal in this OA is whether the impugned order of transfer and relieving the applicant from the present post to facilitate him to join at BCAS Regional Office at Ahmedabad is illegal, improper or incorrect on various grounds raised by the applicant in the O.A. and rejoinder, and hence are liable to be quashed and set aside.

37. Before dealing with grounds raised by the applicant for challenging both the impugned orders, we would like to consider the two preliminary objections raised by the respondents regarding maintainability of the present OA. Firstly, it is stated that since admittedly the applicant is already relieved from the present post on 12.4.2017 itself to facilitate him to join at the new destination at Ahmedabad, this Tribunal has no jurisdiction to entertain the present O.A. However, so far

as the issue of jurisdiction is concerned it is obvious that although the applicant is relieved from the present post, he is yet to join at Ahmedabad and as stated by him he proceeded on leave. As such although he is relieved it may be stated that he is in transit. This being so, unless he joins at Ahmedabad it cannot be said that this Tribunal does not have jurisdiction to entertain the present O.A. Even if the applicant joins at Ahmedabad under protest reserving his right to challenge the impugned order, still this Tribunal will have jurisdiction to entertain such claim and it cannot be said that simply because in pursuance of the order passed by the Competent Authority the applicant joins at Ahmedabad, still said order which is passed by the Competent Authority within the jurisdiction of this Tribunal, this Tribunal will have jurisdiction. Hence, we reject the contention of the learned Advocate for the respondents that this Tribunal has no jurisdiction to entertain the present O.A. and Ahmedabad Bench

alone can entertain O.A.

38. In this respect provisions of Section 19 of the Administrative Tribunals Act, 1985 are very clear which states that "Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance".

39. Provisions of Rules of 7 CAT (Procedure) Rules, 1987 regarding place of filing can also be considered in this behalf. Hence, the impugned order which has been passed by the Competent Authority pertaining to a matter of transfer of applicant within the jurisdiction of this Tribunal, this Tribunal and of course the Hon'ble Principal Bench has jurisdiction to entertain the present O.A. Hence, we reject contentions of the respondents that this Tribunal lacks territorial jurisdiction to entertain present O.A.

40. Another objection raised by the learned Advocate for the respondents that

before filing the O.A., the applicant has not exhausted departmental remedy of submitting the representation to R-2 for cancellation/modification of the impugned orders and hence it cannot be said that he has exhausted all the remedies before approaching this Tribunal. So far as this aspect of the case is concerned, provisions of Section 20 of the Administrative Tribunals Act, 1985 are material which specifically state that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. In this respect it is obvious that there is no rule which requires it mandatory to submit a representation against the impugned transfer order first and then to approach the Tribunal to challenge the impugned order and order passed on representation made. This is so, because when the applicant is already relieved there was hardly any point in submitting the representation on receiving the

impugned transfer order. Some time it is absolutely necessary to rush to the Tribunal to secure interim order in appropriate cases to stay the effect implementation and operation of the impugned transfer order. As such it cannot be said that simply because in the present case the applicant has not submitted any representation before approaching this Tribunal (which he has submitted on the next day of filing of this O.A.), he has not availed all the remedies available to him and hence the present O.A. cannot be admitted. Hence it cannot be said that the O.A. cannot be entertained on this ground and is liable to be dismissed.

41. It is obvious from perusal of pleadings that the two impugned orders have been challenged on various administrative, as well as personal grounds viz. illness of applicant's father, wife and disabled daughter. According to the applicant since he has been transferred it has resulted in causing great hardship to him, since it will be difficult for

him to take care of his ailing family members. The record further shows that after filing of the present OA on 17.4.2017, the applicant forwarded a representation to the respondent No.2 on 18.4.2017 (Annexure-A-13) for cancellation/ revocation of both the impugned orders raising the administrative grounds and personal grounds. It appears that since the OA is pending, no decision has been taken by the respondent No.2 on the said representation so far.

42. We propose to deal with the administrative grounds raised by the applicant first for challenging the impugned orders, deferring consideration of personal grounds.

43. To begin with, it is submitted by learned Advocate for the applicant that the guidelines/transfer policy is framed for the cadre of Officers only and there are no guidelines/transfer policy for Ministerial/Clerical Staff. Hence, the applicant who is a Ministerial staff and not of the cadre of officer was not liable to be

transferred. It is also stated that there have been no instances of transfer of Ministerial staff of BCAS from one station to another. However, in this respect the respondents have quoted and pointed out few instances of transfer of Ministerial Staff in past. It is true that the applicant has not been shifted anywhere in past from the present place till the impugned order was issued and he continued to work at Mumbai for last 27 years. However, the learned Advocate for the respondents has rightly pointed out that although there is no specific transfer policy/guidelines in respect of Ministerial Staff for their transfer from one Regional Office to the other, still transfer being an incident of service and since the applicant is admittedly Central Government employee he is liable to be transferred anywhere, especially when it is not pointed out by the applicant that he is exempted from transfer since beginning as per service condition incorporated in his appointment order.

44. So far as this aspect of the case is concerned, the position is well settled through various judicial pronouncements. To refer a few in **State Bank of India v. Anjan Sanyal and Ors. {2001 (3) SC 436}**, it has been held that "An order of transfer of an employee is a part of the Service conditions and such order of transfer is not required to be interfered with lightly". Secondly, in **Rajendra Singh v. State of U.P. {2010 (1) SLR (SC) 633}**, it has been held that "Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. Hence, he is liable to be transferred in the administrative exigency from one place to the other". It is further held that "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 indications to the contrary".

45. There are many other decisions also on this issue which specifically speak about

transfer as an incident of service and Government servant has no vested right to continue at one place for ever. Although the applicant has not been transferred earlier, it does not mean that he can claim any privilege in this behalf to continue him in the present post for ever or till his retirement, especially when there is nothing on record to show that he has been exempted from transfer. This being so, although there are no specific guidelines/transfer policy for dealing with transfers of Ministerial staff, still by virtue of the fact that the applicant is liable to be appointed anywhere in India as per his service conditions which he accepted, it implies that the employer has a right to transfer him as and when office exigency arises.

46. During the course of arguments the learned Advocate for the applicant further submitted that the impugned order of transfer does not mention any reason for transfer. In this respect it has been rightly pointed out by the learned Advocate for the respondents that

even if no reasons are recorded in the impugned transfer order, it implies that it is either on administrative grounds/office exigency or in public interest. As stated earlier, scope for interference with the transfer order is limited unless it is shown that the transfer is tainted with mala fides or has been effected by an authority who is not competent to do so, or that it is against expressed terms of guidelines. As stated earlier, the applicant has not challenged competency of respondent No.2 to issue the impugned transfer order. Further, the respondents in their reply and sur-rejoinder have given plausible explanation as to why the applicant was required to be shifted from the present post, for the reason that the Ministerial staff Shri Rajesh Kumar, Junior Clerk working at Regional Office, Ahmedabad has submitted resignation and hence there was nobody to man the said office. It is also stated that the applicant having rich experience in the office administration and work as stenographer and has also performed

other administrative duties, he was found most suitable to manage affairs at Ahmedabad Office in a better manner. In this respect, we are satisfied that the contention of the learned Advocate for the respondents that it is the exclusive prerogative of the HOD/Competent Authority to take a decision as to which officer/official will be most competent, experienced and can manage the official work more efficiently. In view of this, we do not find any substance in the contention of the learned Advocate for the applicant that he has been deliberately chosen by the respondent No.2 ignoring other Ministerial staff such as Senior Clerks/Junior Clerks who are presently working at other stations.

47. It is also submitted by the learned Advocate for the applicant that other Ministerial staff having more tenure than the applicant at a particular place and hence they should have been considered first. However, in this respect it has been rightly pointed out that the rule regarding longest stay at a

particular place cannot be applied in the present case, especially when specific guidelines/transfer policy is not there and hence it is the exclusive prerogative of the Competent Authority to choose the best suited official from amongst the available. On this point the learned Advocate for the respondents also relied upon the decision rendered by the Hon'ble Principal Bench in **Sirchand and Ors. v. Union of India and Ors. { (1992) 20 ATC 474}**, in which it has been held that seniority principle need not be followed in the matter of transfer of the officials and the best suited official will have to go although he has less tenure than the others. We, therefore, do not find any force in the contention of the learned Advocate for the applicant that he has been deliberately preferred over other few officials though having little longest stay than applicant for his transfer.

48. It is submitted by the learned Advocate for the applicant that on account of applicant's transfer in place of Junior Clerk,

he will be required to work on the said lower post and also under the officer of lower rank at Ahmedabad, since at present he is working as Stenographer and Personal Assistant with respondent No.3 who is the Regional Director and at Ahmedabad he will be required to work under the Assistant Director. However, this submission is devoid of any substance since even if the applicant is posted at Ahmedabad on resignation of a Junior Clerk and he will be required to do the administrative work there, still it cannot be said that he will thereby be demoted in post. His salary in the present post of Stenographer Grade 'D' will be protected and his promotional avenues will also not thereby be affected. The only thing is that he will be required to do the administrative work also at Ahmedabad in addition to his original work as Stenographer. Further, there being no other officer above the rank of Assistant Director at Ahmedabad he will be HOD there and as such the respondents have rightly pointed out that the applicant should not hesitate in any manner or

should not have any grievance to work under him. There is nothing on record to show that the applicant's initial appointment was with the Regional Director and that he cannot be assigned to work with any other officer below the rank of Regional Director. We, therefore, simply reject the contention of the applicant in this behalf.

49. During the course of arguments, the learned Advocate for the applicant further submitted that Ahmedabad is a very small unit in comparison to Mumbai and the applicant having large experience on the administrative side any other clerical staff should have been preferred by the respondent No.2 who could have easily managed the less work load at Ahmedabad. For the reasons stated earlier, we simply reject this contention since it is the exclusive prerogative of the Competent Authority to choose the appropriate Ministerial staff for being transferred at a particular station. The applicant is experienced both in office work and administration he can easily

handle any situation which may crop up at Ahmedabad Unit. Further it will be beyond the competence of applicant to say that workload at Ahmedabad is less in comparison to Mumbai and he being experienced he should be retained at Mumbai. Hence, on this count it cannot be said that the impugned transfer order is liable to be set aside, nor can it be said that the applicant has been singled out on hostile discrimination in transferring him to Ahmedabad for no fault on his part.

50. During the course of arguments it is submitted by the learned Advocate for the applicant that instead of transferring any other junior clerk/senior clerk to Ahmedabad, he has been deliberately chosen and out of the junior clerks working at Mumbai or any other Regional Office one of them could have been easily transferred to Ahmedabad. However, in this respect it was pointed out by learned Advocate for the respondents that as per the restructuring policy adopted by the BCAS, creation of additional posts of Ministerial

staff except Stenographer Grade 'D' is not permitted and the existing posts will also lapse once the official working on the said post retires or submits resignation or relinquishes the post. In view of this position, since Shri Rajesh Kumar who was working as Junior Clerk at Ahmedabad submitted his resignation, the said post automatically lapsed and it could not be revived by posting any other Jr. Clerk at Ahmedabad. It has also come on record that 13 posts of Stenographer Grade 'D' are created and hence there was no difficulty in transferring the applicant at Ahmedabad instead of waiting for newly recruited Stenographer Grade 'D' to be posted there on completion of process by Staff Selection Commission, which is time consuming. In this respect the learned Advocate for the applicant tried to convince us that instead of transferring applicant at Ahmedabad the said post of Stenographer Gr.'D' could have been filled up through regular recruitment process, especially when it is lying vacant and Shri

Rajesh Kumar submitted resignation some time in the month of December, 2016 and hence there was no urgency as such to transfer the applicant at Ahmedabad. We do not find any substance in this contention, although it can safely be said that in the absence of any Ministerial staff including junior clerk or Stenographer at Ahmedabad, the routine administrative work of the Regional Office there was any how managed by the HOD. This being so, it was felt absolutely necessary to transfer some Ministerial staff there so that the day to day administrative work can be conveniently looked after. In such circumstances of the case, it cannot be said that simply because respondent No.2 found applicant the most suitable person, there was any other better option for him and on that count the impugned transfer order is liable to be set aside.

51. During the course of arguments it was submitted by learned Advocate for the applicant that on account of strained relations between

the Director General (R-2) and the Regional Director Shri B.S.Tiwari (R-3), the applicant has been made a scape goat by transferring him to Ahmedabad. In this respect, the respondents have specifically denied existences of any strained relations between R-2 and R-3. One such incident indicating alleged strained relations as given by the applicant is that respondent No.2 before issuance of the impugned order in this O.A. has transferred respondent No.3 to Imphal and the latter had challenged the said order before this Tribunal in which the interim stay was granted. It is also submitted that since the applicant was exclusively attached to R-3 he was deliberately transferred. We simply say that there is hardly any substance in this contention since when the applicant was attached to respondent No.3 he has to work under him and simply because he was working under R-3 he has been chosen for transfer in order to humiliate him and to put him under trouble. For the sake of argument even if it is assumed that there are

strained relations between R-2 and R-3, still it cannot be said that the applicant was deliberately chosen just with a view to see that there will be nobody to work under R-3. In this respect, the applicant has also stated that on account of his sudden transfer effected in haste, the work of the office of R-3 will be affected and to ensure that office of R-3 runs smoothly, the impugned transfer order should be set aside. However, since the applicant is transferred he need not bother as to how in his absence the work of the office of R-3 to whom he was attached would be managed. It will be for the R-3 to take necessary steps in this behalf by making some alternate arrangements. Hence, we reject this contention of the applicant also to hold that the impugned transfer order is bad.

52. In this respect, the learned Advocate for the applicant also submitted that the applicant being Group 'B' officer drawing Grade Pay of Rs.4,600/- which may be approximately equivalent to the Grade Pay drawn by the

Assistant Director, Ahmedabad, it will not be appropriate on the part of the applicant to work under him. In this respect it is pointed out by respondents that the applicant got financial upgradation under MACP and hence his Grade Pay was enhanced which is, however, not equivalent to that of the Assistant Director. Even if the Grade Pay is similar, considering the fact that the applicant has rendered 27 long years of service still it cannot be said that he belongs to the cadre of officer and Assistant Director who will be the HOD at Ahmedabad will always be superior officer to him, and hence applicant will have to work under him without protest.

53. It is submitted by the learned Advocate for the respondents that the impugned transfer order has been issued in undue haste, especially when the R-3 was on leave and no breathing time was given to the applicant since he was relieved on same day. In this respect, it is obvious from record that the impugned transfer order has been issued and was

forwarded to the office of R-3 on email after scanning the original office order. It is also clear that the R-4 in pursuance of the directions issued by R-2 issued relieving order of applicant first and then copy of the transfer order was served on him. So far as this aspect of the case is concerned, it may be said that the transfer order was issued in little haste. However, absence of R-3 to whom the applicant was attached at the relevant time has hardly any relevance. Even if the applicant was working as Personal Assistant to R-3 besides Stenographer and might have been in custody of some important files, the same could be handed over to R-3 even subsequently. Hence, it does not lie in the mouth of the applicant that R-4 could not have relieved him on the same day and at least should have waited till R-3 resumed the duty. In this respect, it may be stated that there was no Ministerial staff working at Ahmedabad since couple of months and hence it cannot be said that any decision was taken hurriedly to

transfer the applicant there. We reject all the contentions raised by the learned Advocate for the applicant in this behalf to challenge the impugned orders.

54. For the above reasons, it cannot be said that there is colourable exercise of power by R-2 in transferring the applicant to Ahmedabad, especially when no bias or mala fides have been attributed by the applicant against R-2, except by alleging that he had strained relations with R-3. In such circumstances of the case, we do not find any force in the contentions of the learned Advocate for the applicant so as to interfere in the matter of transfer of applicant. For the above reasons also, it cannot be said that although no other Stenographer has been posted in place of applicant at Mumbai and on account of his sudden transfer the Regional Office, Mumbai may face some difficulty in running the office administration smoothly, it can't be a strong ground to quash the impugned orders.

55. We also do not find any force in the

contention of the learned Advocate for the applicant that there is no requirement of a Stenographer at the Regional Office at Ahmedabad, for the reason that the applicant has been transferred there to look after the office work which was being managed by the Junior Clerk who has resigned. Considering the fact that the applicant is Stenographer Gr.'D' his services and experience in the field can conveniently be used for smooth administration of Ahmedabad office and hence the applicant should not have any grievance or ground for refusing to join at Ahmedabad.

56. It is true that the applicant has been relieved on the same day without giving any breathing time to him as stated earlier. However, it is for the administration to take a decision in this behalf and although he is relieved on the same day, he still could have applied for sanction of joining period as per rules inspite of the fact that by the impugned order, he is directed to report at Ahmedabad immediately. Hence, on this count no adverse

inference can be drawn against the respondents.

57. The applicant has alleged mala fides in issuance of the relieving order by R-4. However, it is obvious that he has acted fully in compliance of the impugned transfer order and directions issued by the R-2. No other specific ground from which malice is alleged or attributed to R-4 is ever stated. It cannot be said that R-4 although was aware about receipt of the impugned transfer order, he did not disclose this fact to the applicant during lunch hours and thereafter he was served with the relieving order first followed by transfer order.

58. So far as challenge to the transfer order on the ground of mala fides is concerned, it is settled law that mala fides must be proved by definite evidence. In this respect reliance may be placed on the decision in **State of Punjab v. V.K.Khanna (2001) 2 SCC 330.** In subsequent decision rendered in **State of U.P. v. Gobardhan Lal (2004) 11 SCC 402,** it has been held that allegations of mala fides when made must be

such as to inspire confidence in the Court. In the present case, as stated earlier there is no evidence to prove mala fides on the part of R-4 and especially when no mala fides are attributed against R-2 who has issued the impugned transfer order. So far as this aspect of the case is concerned the learned Advocate for the respondents also placed reliance on the decision in **Chairman and MD BPL Ltd. v. S.P.Gururaja (2003) 8 SCC 567**, in which it has been held that undue haste in taking decision is not by itself a ground for cancellation/setting aside of transfer order unless it is held to be tainted with mala fides. The manner in which the decision is taken has to be seen. As stated earlier, no haste was shown by the R-2 in issuing the transfer order since the decision was taken after about 5 months from submission of resignation by Shri Rajeshkumar, Jr. Clerk who was working at Ahmedabad. As such, it cannot be said that simply because the impugned order was received on the same day by email and applicant was relieved on the same day, there was any undue haste in issuance of the transfer order. As such, no adverse inference

can be drawn against the respondents in this behalf.

59. The record further shows that in fact, R-3 after resuming duty on return from leave has issued a Memo to R-4 since he issued the relieving order. However, as stated earlier this was on the basis of the directions issued by R-2 and it was not by virtue of independent decision taken by R-4. In fact, when Competent Authority has issued the transfer order it must be obeyed by all and the R-3 has no business to challenge the said authority by issuing a Memo to his subordinate officer who has issued relieving order. In fact, by issuing the Memo by R-3 he has *prima facie* rendered himself liable for disobeying the order of R-2 and indulging in insubordination, for which R-2 may initiate appropriate disciplinary action against R-3. It, therefore, cannot be said that simply because R-3 has taken action against R-4 the impugned transfer order in any manner has been affected. We also do not find any force in the contention of the learned Advocate for the applicant that in normal course the hard copy of transfer order

should have reached the office of R-3 from Delhi through post first and there was no need to forward the transfer order on email to the office of R-3. We simply reject this contention being baseless and devoid of any substance, since now-a-days number of modern mode of communication in the form of email, fax, message on mobile phone, telephonic communication are available and the same can conveniently be used in order to avoid delay in dispatch and receipt of the transfer order through ordinary and old mode of service through postal agency which is time consuming. Hence, no adverse inference can be drawn against the respondents in this behalf.

60. The learned Advocate for the applicant tried to emphasize that the applicant was looking forward for his promotion to the post of Security Officer or Assistant Commissioner of Security and on account of his sudden transfer he has lost his prospect. As stated earlier, simply because the applicant has been transferred he will not lose his promotion prospects and he will be considered for promotion as and when it is due to him and he comes in zone of consideration. Hence, we simply

reject this contention.

61. During the course of arguments it is submitted by learned Advocate for the applicant that there is no sanctioned post of Stenographer Gr. 'D' at Ahmedabad and hence the applicant cannot be posted there. In this respect it has come on record that presently in all eight (8) sanctioned posts of Stenographer Gr. 'D' are available, out of which three (3) posts are already abolished fell vacant and nobody was posted there. It is thus obvious that presently five (5) posts of Stenographer Gr. 'D' are still available. It has also come on record that additional 13 posts of Stenographer Gr. 'D' are sanctioned for being allotted to Assistant Directors and process is going on for making recruitment on these posts. As such it can safely be said that out of the 5 posts which are presently vacant one post can be transferred to Ahmedabad from Mumbai so that there will be no difficulty for the applicant in getting his salary there. Of course, this is for the R-2 to look into the

matter by taking appropriate steps to ensure that on joining at Ahmedabad the applicant gets the salary of the post of Stenographer Grade 'D'. We, therefore, reject the contention of the applicant and in absence of any sanctioned post at Ahmedabad, he cannot be transferred there.

62. From the above discussions, we do not find any substance in any of the administrative grounds raised by the applicant for challenging the impugned transfer order.

63. Now turning to the personal grounds raised by applicant for cancellation of the transfer orders viz. Illness of his father, wife and disabled daughter to maintain, it is obvious from record that the applicant after filing the present OA on 17.4.2017, submitted a representation dt. 18.4.2017 (Annexure-A-13) to the R-2 for cancellation of transfer order. It appears that no decision was taken on the said representation so far in which administrative, as well as personal grounds giving rise to hardship to the applicant on account of his transfer to Ahmedabad are raised as stated earlier. This is

obvious because the present OA was pending and was heard finally and hence there was no point in giving ruling on the said representation by the R-2.

64. So far as this aspect of the case is concerned the learned Advocate for the respondents submitted that it is not permissible for the Courts or Tribunals to adjudicate on the issue of hardship raised by the employee for cancellation of his transfer and the same can only be considered by the Competent Authority who issued the transfer order. Hence, it is open for the employee to submit and to make a representation for cancellation/revocation/modification of the transfer order and unless the order is stayed the employee must obey it. In this respect reliance is placed on the decision in **Gujarat Electricity Board and Anr. v. Atmaram Sungomal Poshani - (1989) 2 SCC 602**, in which it has been held as under :-

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident and a condition of service. It is necessary

in public interest and efficiency in public administration. No government servant or employee of public undertaking has legal right for being posted at any particular place. Whenever a public servant is transferred he must comply with the order but if there be any representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. He has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case".

65. The learned Advocate for the respondents further placed reliance on the decision in **State of M.P. & Anr. S.S.Kourav & Ors. (1995) 29 ATC 553**, in which scope of judicial review in the matter of transfer has been considered. In that case the transfer order was challenged on the ground that it has caused hardship on account of commission of suicide by the transferees wife leaving three children. Rejecting the contention, it was held that the

Court cannot go into the question of relative hardship & it would be for the administration to consider the facts of the case and mitigate the real hardship in the interest of good and efficient administration.

66. During the course of arguments the learned Advocate for the respondents submitted that so far as the transfer of Government employee is concerned the Hon'ble Supreme Court in the landmark decision in **S.C. Saxena v. UOI and Ors. - (2006) 9 SCC 583**, in which it been has categorically held that a Government servant cannot disobey transfer order by not reporting at the place of posting and then go to a Court to ventilate his grievance. It is his duty to first report for work where he is transferred and then make a representation as to what may be his personal problems. Such tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.

67. Reliance was also placed on the decision in **Mohd. Masood Ahmed v. State of U.P.**

(2007) 8 SCC 150 in this behalf. So far as this aspect of the case is concerned, the learned Advocate for the applicant submitted that the Hon'ble Supreme Court has not laid down any law in **S.C.Saxena's** case referred supra since basically it was a case in which punishment of Compulsory Retirement imposed in a disciplinary proceedings was challenged. He has pointed out that in that case the applicant unauthorizedly remained absent and hence proceedings was initiated. In the meantime, he was transferred but still did not join and in that context the aforesaid observations were made. In any case, although in **S.C.Saxena's** case the challenge to the transfer order was not involved, still the observation made are squarely applicable since the applicant failed to join by remaining absent initially and even on his transfer. As such it cannot be said that the observations made are relevant nor they can be considered by this Tribunal while deciding the present O.A. It is obvious that in the present case, even after relieving the applicant did not report at

Ahmedabad and approached this Tribunal and then submitted a representation for cancellation of the impugned transfer order which is still pending. Thus applicant has exhibited total disrespect to the impugned transfer order issued by Competent Authority.

68. So far as the contention of the learned Advocate for the applicant that the R-2 is not competent to issue the impugned transfer order in absence of specific transfer policy/guidelines for Ministerial staff, the learned Advocate for the respondents has rightly submitted that power to make appointment includes power to transfer unless the same is expressly barred. In this respect he placed reliance on the decision in **State of Rajasthan v. Anand Prakash Solanki {2003 (7) SCC 403}**. The law laid down in the aforesaid case is squarely applicable, since although there is no specific transfer policy/guidelines in respect of Ministerial staff framed by the respondents, still the employer reserves a right to transfer the employee as and when

official exigency exists as stated and discussed in previous paras also. Hence, we reject the contention of the applicant in this behalf.

69. Relying on the previous decision in case of **Atmaram Sungomal Poshani** and **S.S.Kourav's** case (referred *supra*), it is obvious that the grounds raised by the applicant regarding hardship being caused on account of transfer order due to illness of his family members can very well be considered by R-2. Hence it will not be appropriate on the part of this Tribunal to consider this aspect and interfere with the transfer order. It is still open for the applicant to make fresh representation raising the grounds of illness of his family members and annexing all relevant documentary evidence regarding the medical treatment of his father, wife and disabled daughter and it is for the respondent No.2 to consider it and take a decision.

70. From the above discussions, we are of the considered view that at this stage no relief can be granted to the applicant, keeping open the

issue of seeking cancellation/modification of the impugned transfer order on personal grounds of illness of his family members which would result in causing hardship to him in case the impugned transfer order is not cancelled/modified.

71. In the result, we simply dispose of the OA without disturbing the impugned transfer order with a liberty to the applicant to submit a fresh representation to the respondent No.2, through proper channel, raising personal grounds only for cancellation/modification of the impugned transfer order by annexing all the relevant documentary evidence concerning the medical treatment of his family members, within a period of two weeks from today.

72. On receipt of the representation as above, R-2 is directed to consider and pass a reasoned and speaking order thereon in accordance with law, within a period of two weeks from the date of receipt of the representation, especially by considering DOPT's O.M. dt. 6.6.2014 and 17.11.2014 (Annexure-A-11) in respect of disability of applicant's daughter.

73. The orders so passed shall then be

communicated to the applicant at the earliest, who will be at liberty to approach the appropriate forum.

74. Pending consideration of applicant's representation by R-2, the impugned relieving order dt. 12.4.2017 is revoked and applicant will be at liberty to resume duty in office of R-3.

75. In the facts and circumstanes of the case, parties are directed to bear their respective costs of this O.A.

76. Issuance of c.c. of order to parties be expedited.

(Ms .B .Bhamathi)
Member (A)

(A .J . Rohee)
Member (J)

B.