

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI.

CAMP AT NAGPUR.

ORIGINAL APPLICATION NO.526 OF 2015.

With

ORIGINAL APPLICATION NO.527 OF 2015.

With

ORIGINAL APPLICATION NO.532 OF 2015.

Date of decision: _____ day of _____, 2017.

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

OA.No.526/2015

Vijay Budhaji Pakhide

Aged about 41 years, Working as
 Junior Works Manager,
 Ordnance Factory Ambajahri
 R/o. Plot No. 5,
 Khushi Nagar, Verma Layout
 Nagpur- 440033.

...Applicant.

(Applicant by Advocate Shri. M.M. Sudame)

Versus

1. Chairman

Ordnance Factory Board,
 Ayudh Bhavan, 10-A,
 Shaheed Khudiram Bose Road,
 Kolkata- 700 001.

2. General Manager,

Ordnance Factory Ambajahri,
 Nagpur- 21.

3. The Union of India,

Through the
 Secretary Defence Production,
 Ministry of Defence,
 New Delhi- 110011.

4. Mr. Saurabh Kumar, IOFS,

General Manager,
 Ordnance Factory Ambajhari,
 Nagpur 440021.

...Respondents.

(Respondents by Advocate Shri. R.G. Agarwal)

Connected with
OA.No.527/2015

Shrikant Vithoba Bhoyar
 Aged: 34 years, Occu.
 Working as Junior Works Manager,
 Group B, Gazetted,
 Ordnance Factory Ambajahri,
 R/o. Plot No. 45, Priyadarshani Nagar,
 Behind NIT Garden, Trimurti Nagar,
 Nagpur- 22. **Applicant**
(Applicant by Advocate Shri. M.M. Sudame)

Versus

1. Chairman

Ordnance Factory Board,
 Ayudh Bhavan, 10-A,
 Shaheed Khudiram Bose Road,
 Kolkata- 700 001.

2. General Manager,

Ordnance Factory Ambajahri,
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Through the
 Secretary Defence Production,
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 New Delhi- 110011.

4. Mr. Saurabh Kumar, IOFS,

General Manager,
 Ordnance Factory Ambajahri,
 Nagpur 440021. **Respondents.**
(Respondents by Advocate Shri. R.G. Agarwal)

Connected with
OA.No.532/2015

Vishal Vasant Age

Aged about 40 years, Occu.
 Working as Junior Works Manager
 Ordnance Factory Ambajahri R/o. Plot
 No. 65, Old Subedar Layout,
 (Extension), Nagpur- 24. **Applicant.**
(Applicant by Advocate Shri. M.M. Sudame)

Versus

1. Chairman

Ordnance Factory Board,
 Ayudh Bhavan, 10-A,

Shaheed Khudiram Bose Road,
Kolkata- 700 001.

2. General Manager,
Ordnance Factory Ambajahri,
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4. **Mr. Saurabh Kumar, IOFS,**
General Manager,
Ordnance Factory Ambajhari,
Nagpur 440021. **Respondents.**
(Respondents by Advocate Shri. R.G. Agarwal)

...*Respondents.*

(Respondents by Advocate Shri. V.S. Masurkar)

Reserved on :- 11.01.2017.
Pronounced on :- .

ORDER

Per : Ms. B. Bhamathi, Member (A)

O.A. 526 of 2015, O.A. 532 of 2015 and O.A. 527 of 2015 have been filed by the respective applicants under Section 19 of the Administrative Tribunals Act, 1985. In the above OAs the applicants' cases are admittedly similarly situated. The impugned orders and reliefs prayed for are the same. Hence, facts, circumstances and reliefs prayed for being similar, the OAs are disposed of by

a common order.

2. In the above mentioned OAs, applicants are seeking the following reliefs:-

2.1. Reliefs sought in OA No. 526 of 2015:-

"(i) Call for record of proceedings pertaining to impugned order dated 05.05.2015 and 29.06.2015 issued by DGOF & Chairman Ordnance Factory Board, Kolkata transferring the applicant from Nagpur to Bhusawal (Annex. A/1 & A/2); peruse the same;

(ii) Quash and set aside impugned order dated 05.05.2015 and 29.06.2015 issued by DGOF & Chairman Ordnance Factory Board, Kolkata transferring the applicant from Nagpur to Bhusawal (Annex. A/1 & A/2);

(iii) Quash and set aside speaking order of OFB Order No. JTR-60-Per/NG/2015-16 dated 18.08.2015 issued by DGOF & Chairman Ordnance Factory Board, Kolkata (Annex. A/3);

(iv) Direct the respondent to allow the applicant to work at O.F. Ambajhari till completion of his tenure as per transfer policy;

(v) Any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances of the case;

(vi) Allow this Original

Application with cost."

2.2. Reliefs sought in OA No. 527 of 2015:-

"**(i)** Call for record of proceedings pertaining to impugned order dated 29.06.2015 issued by DGOF & Chairman Ordnance Factory Board, Kolkata transferring the applicant from Ordnance Factory Ambajhari Nagpur (OFAJ) to Ordnance Factory Bhusawal (OFBH) (Annex. A/1); peruse the same;

(ii) Quash and set aside impugned order dated 29.06.2015 issued by DGOF & Chairman Ordnance Factory Board, Kolkata transferring the applicant from Nagpur to Bhusawal (Annex. A/1);

(iii) Quash and set aside speaking order of OFB Order No. JTR-60-Per/NG/2015-16 dated 18.08.2015 issued by DGOF & Chairman Ordnance Factory Board, Kolkata (Annex. A/2);

(iv) Direct the respondent to allow the applicant to work at O.F. Ambajhari till completion of his tenure as per transfer policy;

(v) Any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances of the case;

(vi) Allow this Original Application with cost."

2.3. Reliefs sought in OA No. 532 of

2015:-

"**(i)** Call for record of proceedings pertaining to impugned order dated 05.05.2015 and 29.06.2015 issued by DGOF & Chairman Ordnance Factory Board, Kolkata transferring the applicant from Nagpur to Katni (Annex. A/1 & A/2); peruse the same;

(ii) Quash and set aside impugned order dated 05.05.2015 and 29.06.2015 issued by DGOF & Chairman Ordnance Factory Board, Kolkata transferring the applicant from Nagpur to Katni (Annex. A/1 & A/2);

(iii) Quash and set aside speaking order of OFB Order No. JTR-60-Per/NG/2015-16 dated 18.08.2015 issued by DGOF & Chairman Ordnance Factory Board, Kolkata transferring the applicant from Nagpur to Katni (Annex. A/3);

(iv) Direct the respondent to allow the applicant to work at O.F. Ambajhari till completion of his tenure as per transfer policy;

(v) Any other relief which this Hon'ble Tribunal deems fit in the facts and circumstances of the case;

(vi) Allow this Original Application with cost."

3. All the applicants are working as Junior Work Managers (Mechanical), hereinafter referred as JWM(M) Group-B, Gazetted for a

period of 5 years and 2 months, 2 years and 2 years and 10 months, respectively in OF Ambajhari, Nagpur. They have rendered satisfactory services with the respondents.

3.1. Applicants were transferred by the DGOF & Chairman OFB from OF Ambajhari to OF Bhusawal/ Katni on 05.05.2015. Applicants represented immediately to the Chairman OFB against the transfer. The applicants cited their personal/ domestic problems and sought cancellation of transfer order.

3.2. Applicants sought for copies of correspondence including DO letter of R-2/R-4 i.e. GM OF Ambajhari to OFB Kolkatta, including, file notings regarding inter factory transfer on 09.05.2015. The OFB replied vide letter dated 23.07.2015 along with specified documents sought for. File showed that there was no approval of Chairman/ OFB for transfer of applicants. The file noting was approved by Member/ M&C only and transfer order was issued on the proposal of General Manager i.e. Official Respondent No. 2

and Private Respondent No. R-2/R-4). As per transfer policy Chairman/ DG OFB is the final competent authority in transfer matters.

3.3. On 23.12.2013 MOD issued transfer policy for deployment of group B Gazetted Officer. The impugned order is not in public interest and completely contrary to the above transfer policy being issued with malafide intentions at the instance of R-2&4. On 29.06.2015 the transfer order was amended by DGOF and Chairman OFB. It was kept as it is in the case of applicants in two OAs while in the case of applicant in the third OA it was amended from OF Katni to OF Bhusawal. The representation to the Chairman OFB, Kolkata dated 03.07.2015 was not considered.

3.4. In reply to RTI application seeking information on the file noting done at OFB for issuing transfer order, the OFB vide letter dated 29.06.2015 replied by providing copy of file noting of OFB regarding the amended transfer order dated 29.06.2015. From the file noting it is clear that transfer order were

amended on the basis of two DO letters dated 13.05.2015 and 02.05.2015 written by R-2&4 and not by due application of mind by OFB or by following transfer policy guidelines.

3.5. On 09.07.2015 OFB issued transfer order for transfer of 155 JWM's from all over the India. But on 14.08.2015, OFB issued order for cancellation of transfer orders of 115 JWM's out of 155 JWM's.

3.6. In reply to RTI application dated 03.08.2015 seeking information on the criteria/ policy followed by GM/OFAJ for considering the name of the applicant for inter factory proposal. This reply was received from R-2&4.

3.7. In reply to RTI application dated 10.08.2015 seeking information on the list of JWM's at OFAJ senior as well as junior to the applicant, the list of JWM's was received on 31.08.2015. The list clearly shows that there were more than 100 JWM's at OFAJ who are much more senior to applicant in all respects. But they have not been considered for transfer.

3.8. Earlier, applicants filed OA Nos. 2163/2015, 2164/2015 and 2165/2015 challenging the transfer orders, which was disposed of at admission stage by this Tribunal directing R-1 to consider the representation of the applicant and to pass a reasoned and speaking order vide order dated 30.07.2015. It was directed that till the disposal of the representation, the applicant will not be released from the present post. On 18.08.2015 R-1 issued a reasoned and speaking order for rejecting the representation of all the three applicants, which has been challenged in the present OA.

4. Respondents have filed reply to the OA and denied and disputed the contentions of the applicants in the respective OAs. It is submitted that the applicants filed representation requesting for cancellation of transfer order citing many personal reasons. Thereafter OFB amended its earlier order vide order dated 29.06.2015. It is further submitted that the applicants without even

waiting for disposal of his representation unilaterally approached this Tribunal seeking cancellation of the impugned transfer order issued by DGOF and Chairman OFB by filing OA No. 2163/2015, 2164/2015 and 2165/2015.

4.1. It has been submitted that the applicants' participation/ membership in any Union/ Association has no relation with the impugned transfer. Seniority is also not a criteria for ordering transfer. Shortfall of JWM (M) has been taken care of while issuing the transfer order as it is the prerogative of OF Board to address the shortfall of manpower of any trade and not just that of the applicants' trade. All the problems mentioned in the representation of the applicants have been communicated. It is denied that the transfer policy has been violated since order is on ground of functional requirement and this is permissible under law.

4.2. In Ordnance Factory organization, every employee is a member of Union/ Association. But just because an employee is

member of a particular Association, it does not give them any right of not being transferred. An employee who has accepted all India transfer liability at the time of appointment cannot complain.

4.3. The GM as the CEO (R-2 & R-4) of the organization felt the need for more JWMs in the Non-technical stream as there was only one JWM from the Non-technical stream in the factory. OF Ambajhari has 12 sections of administration which should ideally be headed by JWM each for smooth functioning. At that time only one JWM from administration side was available in the factory, therefore the need for posting more JWMs from the administration field was found necessary. It is in this context that R-2 & R-4 as GM issued the DO letter dated 17.03.2015 stating that the factory is in need of JWM's in non-technical stream to man the administrative sections and if required technical JWMs can be released. Hence transfer were need based and as per functional requirement and therefore the

allegation of malafide is denied. The GM is well within his right to ask head quarters to post manpower according to technical requirement of the unit which he heads. Category/ trade to which an employee belongs has no place in deciding the transfer order.

4.4. As regards the letter dated 20.04.2015 issued by OFB M&C section it is submitted that OFB A/NG section deals with inter factory transfer and not M&C section. There is no need for approval of Chairman/ OFB in inter section note. The applicant enclosed copy of NG section note dated 27.05.2015 wherein the Chairman OFB has approved the transfer order.

4.5. Further, GM in the capacity of CEO has the right to decide the functional requirement of manpower according to present and future plans of operation and hence the applicant's claim that the GM should be guided number of JWMs in a particular trade is not entirely relevant.

4.6. The transfer order in respect of JWM

(Non-technical) was issued on 09.07.2015 as Shri. Naik was in the strength of OFAJ for more than 8 years. The said officer requested for inter factory transfer to AFK and his application was considered by OFB based on the 100 point formula laid down in the policy of transfer. The transfer of Shri. Naik was made in the light of his appeal for transfer on compassionate grounds and hence can in no manner be compared with the transfer of the applicants. The transfer order was duly complied with by the GM, who has released Shri. Naik. Although functional requirement of non-technical JWMs was projected to OF Board under General Manager's letter dated 17.03.2015. But this mere release of a non-technical JWM on transfer does not show the functional requirement in OF Ambajhari does not exist and that the said action was discriminatory against the applicants.

4.7. In the amendment transfer order dated 29.06.2015 the transfer of one of the four was cancelled and the posting Shri. Bhoyar, one of

the three applicants, was changed from OF Katni to OF Bhusawal. In the said OAs, the authority issuing the transfer order being the Chairman, no malafide has been alleged.

4.8. Seniority is no criteria for inter factory transfer. The future requirement of the factory based on the plans of future production activities becomes the basis for deployment of manpower. Hence the contention that other technical JWMs were not considered for transfer does not hold water.

4.9. The fact that OF Bhusawal used the different technology than that of OF Ambajhari and hence this cannot be decided by the applicant and he has no concrete knowledge about the technology used by the OF Bhusawal. The trade of JWM which will be considered for transfer can only be decided by OFB who has knowledge of the current and future plan for the different factories hence the transfer order issued is in public interest. An employee cannot decide about his utility in a particular factory. No employee also has a

vested right to remain posted at a particular place and unless the transfer order is passed in violation of any mandatory rule. The applicant is trying to usurp the role of OFB in deciding the manpower requirement of a factory and which applicants are not entitled to. The averment is trespassing the jurisdiction of OFB.

4.10. It is settled law that transfer being an incidence of service is not to be interfered with by the courts, unless it is shown to be clearly arbitrary or initiated by malafides or infraction of any professed norms or principles governing the transfer. It is entirely for the employer to decide when and where and at what point of time a public servant is transferred from his present posting. Transfer orders are not only an incidence but it is an essential condition of service. Respondents have relied upon the judgment of the Apex Court in the case of

State Bank of India Vs. Anjan Sanyal and Ors.
(AIR 2001 SC 1748).

5. In the rejoinder filed by the applicant the contention is that the reply to the OA have been disputed and while the contentions in the OA have been reiterated.

5.1. The letter dated 13.05.2015 forwarding applicants' representation to OFB by R-2/R-4 on 13.05.2015, clearly shows that he has influenced R-1 by not allowing OFB to take its own decision based on transfer policy. This shows malafide interest of R-2&4 in transfer of the applicants.

5.2. In the DO letter dated 17.03.2015 to OFB, R-2&4 has deliberately fed erroneous information to OFB officials about the alleged completion of tenure by applicants at OFAJ, which is contrary to facts.

5.3. Again on the basis of recommendations of R-2&4 the transfer of one of the JWM Mr. S.M. Tiwari, who belongs to general category was cancelled and vide the same DO letter, the R-2 & R-4 proposed that the transfer of the one of the applicants present in these OAs may not be changed. R-1 accepted the

recommendations in toto.

5.4. It is also pertinent to note that applicant belongs to SC category and Mr. Age (Applicant in OA No. 532/2015) belongs to ST category. This shows the biased attitude of R-2&4 towards SC/ST category. As per DoPT OM dated 24th June, 1985 Government servants should desist from any act of discrimination against members of SC/ST communities on ground of their social origin.

5.5. In OFAJ there are more than 150 JWM's senior to applicant who may also have been considered for inter factory transfer, by following transfer policy. The official respondents could also have transferred those senior to applicants either from OFAJ or from other factories having surplus JWM (M) i.e. more than the sanctioned strength. Many other transfer cases of JWM's are pending with OFAJ but OFAJ management is not in a hurry to implement the same and release the JWM's under transfer, showing undue interest in applicants' transfer. The claims of all India

transfer liability of applicants is only an excuse and used to mask discrimination of applicants.

5.6. The respondents' contention is that the transfer order has been issued as per functional requirement. The functional requirement can be of JWM (M) and cannot be specifically of applicants by name.

5.7. The amendment of the transfer order issued on 29.06.2015 within a month of issuing first transfer order dated 05.05.2015. Functional requirement of units would not change within such a short time. Further, while or after issuing amended order on 29.06.2015 some other JWM (M)s could have been posted in OFKAT to fulfill their functional requirement. Another large scale transfer order was issued on 09.07.2015 by OFB transferring 155 JWM's. In the said transfer order also, none of the JWM was posted in OFKAT. Hence, the real intention is not the issue of functional requirement but biased attitude of R-2&4 which resulted in the

impugned order.

5.8. In reply to RTI application to OFBH, to get information regarding the correspondences done by OFBH officials regarding requirement of JWM's in OFBH, the RTI reply clearly states that OFBH had not projected any such requirement to OFB regarding JWM (M) .

5.9. Another RTI reply dated 22.09.2015 clearly shows that Ordnance Factory Project Medak (OFPM) under OFB has 130 sanctioned strength of JWM (M) and existing strength is 220, which means that there are 90 surplus JWM(M) at OF/PM. From the same RTI reply it can be easily deduced that HAPP has 18 JWM (M) in excess of sanctioned strength.

5.10. As per the transfer policy based on the projected requirement from factories/ units/ OFBHQ, a circular should be issued twice calling for applications indicating preference for posting. Accordingly the circular was issued by OFB on 01.05.2015 for functional requirement at OFIL and NADP, both

under the OFB. But no circular was issued regarding the requirements of either OFBH or OFKAT.

5.11. The policy dated 23.10.2015 requires that JWM's who have completed over 10 years of service in one single unit can be transferred based on functional requirement. Applicants had not completed the prescribed tenure. Hence the party was again violated.

5.12. Shri. Naik, JWM/ (NT), OFAJ was transferred from OFAJ to AFK on his own request, but is shown to have been transferred in public interest even though there was an acute shortage of JWM (Non-technical) at OFAJ.

5.13. In sum and substance the transfer was on account of the Union's letters regarding employee's grievances which was not taken in right spirit by R-2 & R-4 resulting in causing transfer of applicants by his pick and choose method.

6. In the Sur-rejoinder filed on behalf of the respondents the contention in the rejoinder filed by the applicant respondents

denied, disputed and reiterating the said contentions in reply to the OA. The allegation of malafide and harassment to JWM belongs to SC/ ST category is also specifically denied.

7. We have carefully perused the **OA No. 526/2015** alongwith Annexures A-1 to A-18 and Rejoinder alongwith Annexures A-1 to A-27 filed on behalf of the applicant.

7.1. We have carefully perused the **OA No. 527/2015** alongwith Annexures A-1 to A-23 and Rejoinder alongwith Annexures A-1 to A-25 filed on behalf of the applicant.

7.2. We have carefully perused the **OA No. 532/2015** alongwith Annexures A-1 to A-18 and Rejoinder alongwith Annexures A-1 to A-26 filed on behalf of the applicant.

8. We have carefully perused the common reply to **OA No. 526/2015, 527/2015 and 532/2015** along with Annexures R-1 to R-9 and Sur-Rejoinder filed on behalf of the respondents in each of the OAs.

9. We have heard the learned counsels for the parties and carefully considered the

facts, circumstances, law points and rival contentions in all the three OAs.

10. The issue for consideration is whether the action of R-2/R-4 in getting the applicants transferred was based on functional requirement or motivated by the fact that applicants as office bearers/members of the Union had taken up the grievance of employees, which was not taken in right spirit by R-2 & R-4, leading to pick and choose attitude/ action of R-2 & R-4 resulting in recommendation for transfer of applicants from OF Ambajhari on the basis of erroneous information provided to OFB.

11. In this connection the transfer policy of JWMS (M) dated 23.12.2013 is recalled. The relevant paras of the transfer policy reads as follows:-

"1. Objectives

- To ensure reasonable tenure that promotes core competencies and domain knowledge.
- To enable exposure to new areas of work and encourage second and third line of experts.
- To accommodate genuine

problems and difficulties of the officers in a transparent manner.

2. Transfer on Functional Grounds

- **Generally, JWM should work in the factory continuously for a period of 10 years unless it is required to transfer on functional ground.**

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- Based on the projected requirement from factories/units/OFBHQ, a circular **should be issued twice in a years i.e. in January and July calling for applications indicating preference for posting.**

- **Transfers may be considered normally twice in a years, as on 1st April, and 1st October.**

3. Request Transfers

- Request for transfer from employees suffering from terminal ailments shall be given priority.

- While considering other requests for transfer, GOI instructions on spouse cases, physically challenged, mentally challenged family members etc. will be followed.

- The officer should complete at least 3 years tenure in a particular station, before his request for transfer can be considered.

List of hard stations:

1. OFBOL
2. OFIT
- 3.OFV
- 4.OFBH
- 5.OFPM
- 6.OEFHZ
- 7.OFCH
- 8.OFPN

4. Standing Committee for posting/transfers

- A Standing Committee comprising the following shall consider all cases of transfer including request transfer and give specific recommendation for approval of the competent authority.
- Composition of the Standing Committee:-
 - (i) Member/Per-Chairman
 - (ii) DDGs of all Operating Divisions-Members
 - (iii) DDG/IR-Member Secretary

5. Competent Authority

- Based on the recommendation of the Standing Committee, all transfers whether on functional ground or on request will be issued, with the approval of DGOF & Chairman, OFB.
- Notwithstanding above, DGOF & Chairman, OFB reserves the right to order or to refuse any transfer on administrative and functional grounds.

12. From the records it is clear that the applicant in OA 526/2015 joined the organization in 2002 as Chargeman Group B at Kanpur. He came on mutual transfer basis on 28.11.2009 to OF Ambajhari. He was promoted as JWM (M) on 30.05.2010. He belongs to SC category. He has worked at OF Ambajhari from

2009 to 2014, of which the period from 2009-2010 was as chargeman Group B and the period from 2010-2015 was as JWM(M) .

13. Applicant in OA 527/2015 joined the organization at Ambajhari in 2004 as Chargeman Group B and he was promoted as JWM(M) on 15.11.2012. Therefore he has spent 12 years at Ambajhari in all capacities but worked for a period of 2 years and 9 months as JWM at Ambajhari. He belongs to General Category.

14. Applicant in OA No. 532/2015 belongs to ST category. He is a permanent resident of Nagpur. He was appointed as Machinist in 1999 at OF Ambajhari. On 11.06.2013 he was promoted as JWM (M) . Therefore applicant has continuously worked at Ambajhari from 1999 to 2015 in all capacities. But in the capacity of JWM(M) , he has worked from 2013 to 2015.

15. As per the policy dated 23.12.2013 earlier referred, 'generally', i.e. there may be exceptions, a JWM who has worked in a factory continuously for a period of 10 years is liable for transfer unless or transfer is

done on functional grounds i.e. even if tenure is not completed. It is clear that all three applicants have not completed the continuous period of 10 years at OF Ambajhari. Hence their transfer from Ambajhari to another OF cannot come under the category of JWMs who have been working in the OF unit for continuous period of 10 years. The only other ground on which, JWM can be transferred is on the basis of functional requirement even with a lesser tenure. Overall this is 'generally' to be done, but there may be exceptions. The Tribunal will consider this point also.

16. On the issue of functional requirement based on future plans of OF Ambajhari not much details are on record. Record shows that the R-2 & R-4 approached OFB Head Quarters with a limited request to post JWM (Non-technical) claiming acute shortage and stating that, if required, JWMs (Technical) can be spared from OFAJ without replacement. However, in this connection the information provided to member M&C stating

that JWM (M) who have put in more than 10 years tenure at a stretch in OFAJ in various capacities and 2 to 4 years was not erroneous as contended by the applicants since applicants had put in anywhere between 2 to 5 years at OF Ambajahri. But, as per the spirit of the policy they should have spent about 10 years in a factory before being considered for transfer and if being transferred before the 10 years tenure, then a very strong functional requirement should be made.

17. As per RTI information, the strength of JWMs at OFAJ was as follows:-

"Sanctioned strength and existing strength of JWM at OFAJ as on date is as follows:-

Sl No.	Discipline	Sanctioned Strength	Existing Strength
1	MECH	191	117
2	ELEC	28	24
3	CIVIL	6	6
4	CHEM	8	13
5	MET	25	19
6	CT	0	0
7	LT	0	0
8	NT-OTS	14	1
9	NT-ST	7	4

18. Obviously, there was a shortage in the category of 1-5 all forming part of JWM (T) and in the category of JWM (NT). Shri. Naik belonged to NT category. In the letter dated 17.03.2015 the R-2/R-4 has stated as follows:-

"2. OFAJ, has 186 JWMs out of which 180 are from Technical stream, 05 stores stream and only 01 from NT stream. OFAJ is in need of few JWMs in NT stream for effective management of admin areas.

3. As regards JWMs in technical stream, the following JWMs from Mechanical stream, whose details are given below could be considered for transfer from OFAJ on without replacement basis:-

Sl No	Name S/Shri	P No.	EQ	Date of Birth	Dt of joining OFAJ	APAR GRADING		
						11-12	12-13	13-14
01	Shrikant Bhoyar	888169	BE (MEC H)	22.07.1981	19.07.2004	VG	VG	VG
02	V.V. Age	888187	DME	20.12.1974	02.11.1999	VG	VG	-
03	Vijay B Pakhide	858874	DME	17.10.1973	20.04.2002	VG	VG	VG
04	Sanjay M Tiwari	888163	DME	21.01.1978	19.07.2004	O	O	-

4. From the above, it can be seen that all the above JWMs have completed more than 10 years tenure at a stretch in OFAJ in various capacities and 2 to 4 years serving in the

capacity of JWMs.

5. *In view of the foregoing, the above JWMs may be considered for transfer out of OFAJ and in turn OFAJ is requesting for posting of JWMs in NT stream."*

19. The issues for consideration is whether the functional requirement was objectively assessed and projected in the light of future plans? We considered the matter and observed that firstly no replacement for NT stream was made despite acute shortage. In spite of acute shortage Shri. Naik, (the only person in that NT stream at OF Ambajahri) request for transfer was allowed, immediately after the transfer of applicants. His request may be a case of request transfer at para 3 covered by the 100 point formula, but his transfer was effected without any replacement at the time of transfer or thereafter. The acute shortage was allowed to deplete further from one to none or zero out of a requirement of 14. Hence, the claim of R-2 and R-4 that administrative section required strengthening having direct

nexus with transfer of applicants is not borne out on record, in any convincing manner. R-2 & R-4 was required to be transparent about how the names of applicants were selected from the 180 JWMs.

20. One other evidence that has been submitted by the applicants, contradicting the contention of the respondents is that OF Bhusawal had denied making any correspondence with OFB (Kolkata) complaining about shortage although shortage existed. However, the fact is that where no shortage existed at Bhusawal, being a holding station, still this did not prevent the respondents from placing one of the applicants at Bhusawal on inter factory basis.

21. Reply dated 29.08.2015 under RTI shows that out of a total 181 JWMs some of them at Sr. No. 171,172,173,174 are shown to be serving since 2006 as JWM. There are others who are serving at Ambajhari since 2007 and many others who are serving since 2008 etc. The contention of the respondents that

seniority does not matter in transfer cannot be faulted. However, length of stay of an employee at Ambajhari, is among the main determinants as per policy for being considered for transfer and not seniority. It is clear that there were others at Ambajhari staying a longer period than that of applicants, even though they also may not have completed 10 years. This is a vital indicator to show if there was some pick and choose when the applicants' cases were recommended by R-2 & R-4 from among the list of JWMs (Technical) for transfer.

22. The plausible answer to the above questions emerges from a perusal of the communications of the Union to the respondents. The two communications on record show that the Union has taken up several issues with R-2 & R-4. There is nothing on record to show that the Respondents gave any reply to the Union on issues raised by the applicants and others or how these issues were dealt with. The applicant is one of the

OAs is the President of the Union.

23. In our examination we did not see any impolite language in the two Union letters dated 03.05.2014 and 27.08.2014 placed before us. However, on 23.10.2015, the OFB Kolkata addressed a letter to Ministry of Defence Production, in response to the note of the Ministry dated 06.10.2015 showing that a review meeting was held by the Joint Secretary of the Ministry with representatives of the Union on 24.09.2015. From a perusal of the note it shows that the constituent members of the Association, have displayed misconduct in the course of verbal communications with the employers i.e. R-2 & R-4 if not while submitting the Union letters.

24. In this connection it is also gathered from record, that R-2 & R-4 had (earlier in 2014) reported to OFB HQ stating that the Union is provoking/instigating and giving directions to other employees to disobey the instructions of superiors. There is no reference by name. But the role of the

President, among others, holding leadership position can be presumed to have been found instigating in the perception of R-2 & R-4.

25. In view of the above, the learned counsel for applicants contends that the impugned action has taken place by way of punishment. He argues that it is settled law that transfer cannot be treated as punishment and it was for the respondents to take action as deemed fit, if there is a case of misconduct. He further contends that, in this case transfer, has been adopted as first resort.

26. Evidently, Departmental action cannot be taken against an Association, when the matter was one of collective bargaining. Hence, dominating influencing, disturbing elements were apparently identified by R-2&R-4 and this is how the applicants in the OA found their names in the transfer order. The only other person in this group i.e. Shri. Tiwary was transferred along with applicants on 05.05.2015 and later the transfer was

cancelled on 29.06.2015. If it was a case of functional requirement, then those having longest stay at Ambajhari would have qualified to be considered for transfer. This was not done. Hence, it is clear that activities of applicants in the Union, specifically considered as disturbing to factory functioning, had much to do with the transfer of applicants, as distinguished from those considered not so disturbing but having longer stay at OFAJ than applicants. In this connection, we have noted that the Ministry of Defence Production did not reply any further to the OFB Kolkata note after the said response was sent to the Ministry.

27. Whether such pick and choose was based on the punitive attitude of R-2 & R-4 and whether this was a violation of settled law or whether the impugned action was a befitting response to ensure discipline in a factory to ensure smooth production of defence equipments having a bearing on national serving interest are, admittedly, important

issues for our consideration in a judicial reviews. However, the prime point that we now proceed to consider is whether there was any violation of the transfer policy.

28. As per para 4 of the policy it is clear that a Committee was constituted, to examine and recommend transfer proposals to Chairman OFB, who is the final authority to decide transfers. The applicants contend that recommendation of R-2 & R-4 was simply accepted by the member M&C when the first impugned order dated 05.05.2015 issued. Not having anything on record contrary to applicants' contention, it means that the Standing Committee did not consider the issue or that the issue of transfer of applicants did not come up before the Committee. The respondents argue that it is an inter section transfer and did not require approval of Chairman OFB. However, it is evident and cannot be denied that it was, in fact, an inter factory transfer and para 4 of the guidelines was very much applicable. Even

when the amendment order of 29.06.2015 was issued, under orders of Chairman OFB the views of R-2 & R-4 was taken into consideration, but this time it was partially modified. Again, there is no evidence that the Standing Committee examined the matter or that its views were taken, when the amendment order was issued which was all the more dispensable since there was specific mention of applicants names recommended/ amended/ cancelled for transfer between 05.05.2010 to 29.06.2015. However, when the DGOF and Chairman OFB gave approval for the amended transfer orders, it amounted to accepting the implicit purpose of transfer i.e. consistent with the OFB note to MOD, but explicitly supporting the functional requirement projected by R-2 & R-4. But the fact is, the procedure laid down in the policy was not followed in effecting the transfers by R-1 as Chairman OFB.

29. One other issue is that the policy requires is that requests will be obtained from the employees before transfers are

effected. On 01.05.2015 a notice was issued seeking options from the employees of other OF units but not from OF Ambajhari. Hence, it is applicants' contention that the transfers took place before calling for/ obtaining options in violation of policy. There is force in the above contentions of applicants. Although, the respondents are not bound by options, the right to exercise options and of such options being duly considered has denied. We hasten to add that exercise of option, in principle, will not override the respondents prerogative to decide proposals based on functional requirement, which is the ultimate overriding determinant. However, we have already established that the transfers had much to do with applicants participation in Union activities, considered prejudicial to factory interest rather than functional requirement, *per se*, in the present OAs. Hence, the importance of putting the proposals of R-2 & R-4 through the test of Standing Committee was essential. The proposal under

functional requirement remained unassessed by the Standing Committee which could have imparted the needed objectivity to the whole issue.

30. In view of the foregoing discussions, it is on record that the applicants did not complete 10 years of service as JWM at OF Ambajahri. But it was prerogative of the respondents to transfer employees JWM based on functional requirement even without completion of prescribed tenure of 10 years. However, some feeble attempts could only be made to substantiate functional requirement by R-2&R-4 as applicants' involvement in Union activities did influence R-2&R-4 to recommend the transfer which was accepted without going through the Standing Committee. Hence, it was necessary for the respondents to have considered the cases of transfer in the Standing Committee as prescribed in the policy and not issue transfer orders merely on the basis of recommendations of the General Manager of R-2&R-4. It was necessary for the

Committee to have considered the recommendation of GM and then submitted recommendation to Chairman OFB for appropriate orders after due consideration of the proposal of R-2&R-4. We cannot deny that there is no evidence to show that the applicants have been transferred, although in the interests of discipline, in connection with their activities in the Union considered a disturbing feature by R-1, R-2 and R-4.

31. However, a proper reading of the policy at para 2 shows that "generally", JWM should work in the factory continuously for a period of 10 years unless it is required to transfer on functional grounds. There can be exceptions to both contexts i.e. even if a JWM has not completed 10 years in one unit and even if there is some evidence of functional requirement a JWM can be transferred in exceptional cases. This is the meaning of the use of the word "generally". The Tribunal cannot deny that this is the respondents' prerogative. But this must be done as per laid

down procedure in the policy i.e. by being considered by the Standing Committee, which shall recommend to the Chairman OFB (R-1) for passing the final orders. In this case, the recommendation of R-2&R-4 regarding functional requirement, ostensibly based on future plans and connecting the same with the fulfillment of the functional requirement by specifically naming the three applicants was accepted in toto by R-1 without deliberating on the issue of functional requirement per se. It also appears from the reply note to the Ministry of Defence Production by OFB that OFB i.e. R-1 was also of the view as the GM OFAJ that the Union including the office bearers and members some of whom are applicants, have indulged in a behavior not conducive to the smooth functioning of OF Ambajhari. The respondents chose transfer as an action in response to the disturbing activities of the applicants in the interest of maintaining the discipline of OFB, resulting in pick and choose. Since, the OFB Kolakata was fully in the know of the Union

activities at OF (Ambajahri), they should have examined whether options, other than transfers were considered or whether transfer was considered as the only desirable form of action in the interest of maintaining discipline in such factories involved in Security/Defence-related Production. The Standing committee could have justified before R-1 as to whether transfer was necessary to maintain discipline or whether there were other ways in which the applicants could have been dealt with. But this was not done.

32. The prerogative of the authorities to transfer cannot be questioned in the interest of discipline, even though the applicants had not completed 10 years and even if functional requirement has not been made fully evident. But the manner in which R-2&R-4 got his way through to effect the transfer, in violation of procedure laid down in the policy is questionable. We are anxious not to be misconstrued that discipline in the units can be allowed to suffer. This will not provide

respondents to take suitable action strictly in accordance with transfer policy and settled law.

33. Accordingly, the OAs are allowed. No costs.

(Ms. B. BHAMATHI) (SHRI. ARVIND J. ROHEE)
MEMBER (A) MEMBER (J)

srp