

CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI

O.A.No. 292/2016

**Tuesday the 22<sup>nd</sup> day of August, 2017.**

**Coram: Hon'ble Shri Arvind J. Rohee, Member (J)  
Hon'ble Ms. B. Bhamathi, Member (A) .**

**Sh. Upendra Vilasrao Dhone,**  
S/o. Vilasrao Dhone, Aged 41 years,  
Occ:- Assistant Hydrogeologist,  
R/o. Flat No. 102,  
Nisarg Residency, Sector 29,  
Ravet Pradhikaran, Pune. .... **Applicant.**  
(By Advocate Shri S.V. Marne)

Versus

**1. Union of India,**  
through the Secretary  
Ministry of Water Resources,  
Shram Shakti Bhavan,  
New Delhi- 110001.

**2. The Chairman**  
Central Ground Water Board,  
Ministry of Water Resources,  
Government of India, Bhujal Bhavan,  
N.H. 4, Faridabad- 121001,  
Haryana State.

**3. The Regional Director**  
Central Ground Water Board,  
Central Region,  
N.S. Building, Civil Lines, Nagpur 440001.

**4. The Officer-in-Charge**  
Central Ground Water Board,  
Maharashtra State Unit  
Kendriya Sadan, Akurdi,  
Pune 411044. .... **Respondents.**

(By Advocate Shri B.K. Ashok Kumar)

**Order reserved on : 02.08.2017.  
Order pronounced on : 22.08.2017.**

O R D E R  
Per: Hon'ble Ms. B. Bhamathi, Member (A).

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking 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 22.03.2016 qua the applicant 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 factual matrix of the applicant's case in this OA is as follows:-

**2.1** The applicant's case is that he joined the Central Ground Water Board (CGWB) as Assistant Hydro Geologist on 22.01.2001 with R-1 and was posted at CGWB, NWHR, Jammu. After completion of 2 years and 10 months of service, he was transferred to CGWB, SUO, Pune in November 2003 where he has been working.

**2.2** On 18.02.2013 while the applicant was traveling by road to Yavatmal for official/ field duties he met with an accident and suffered severe injuries while his left hand got partially paralyzed.

The Applicant was required to undergo medical treatment for almost one year. Even till date the applicant is undergoing treatment for the injuries suffered in the said accident. The notified Medical Authorities of Government of Maharashtra have issued Disability Certificate to the applicant dated 30.01.2014 certifying that the applicant suffers from Disability of physical impairment in L/H upper limb weakness and 55% disability.

**2.3** For the medical period of one year for which the applicant underwent medical treatment, respondents sanctioned medical leave to the applicant because of which the medical leave account of the applicant got debited. Applicant requested the Respondents to grant him special leave as he had met with the accident while on duty.

**2.4** Since, the said request of the applicant was not accepted by the respondents, the applicant filed Grievance Petition dated 22.05.2013 through the Central Public Grievance Redress & Monitoring System (CPGRMS). The petition was routed through R-1. An Enquiry Committee had to be set up by R-2. However, the Enquiry Committee gave its recommendation against applicant.

**2.5** Applicant therefore made another grievance

Petition dated 05.11.2014 citing discrimination meted out to him as other similarly situated individuals were granted special leave or medical treatment in respect of "on duty accident". The said grievance petition is still pending.

**2.6** In the meantime, the applicant filed Petition in the Court of Commissioner for Physically Disabled (CCPD), New Delhi on 26.08.2013 being Case No. 396/1024/2013. This irked the respondents and became reason for creation of official malice.

**2.7** Applicant in respect of his non promotion to the post of Scientist 'B', 'C' and 'D' has filed OA No. 3761 of 2013 before Principal Bench of this Tribunal. Filing of the said OA also created bias in the minds of the respondents against him.

**2.8** In gross violation of the provisions for timely communication of the APARs, the respondents failed to communicate the APARs of the applicant to him for the years 2012-13, 2013-14 and 2014-15. Applicant therefore made grievance dated 10.06.2015 to the respondents for non-communication of the said APARs. It is only after the applicant addressed a Grievance Petition that the APAR for the year 2014-15 came to be communicated to the applicant. Applicant was given only 6 marks in the APAR for the year 2014-15 as against 8

marks in most of his other APARs. Applicant made representation for upgradation of the said APAR, but the respondents have deliberately failed and neglected to decide the said petition.

**2.9** In the year 2014, there was an unsuccessful attempt on the part of the respondents to frame the applicant in false disciplinary proceedings by referring the matter to vigilance Section. When the applicant sought for some information under RTI with regard to his grievance for non grant of special leave, he came across file notings of the year 2014 which shows that draft charge sheet was prepared against the applicant. The subsequent file notings dated 25.09.2014 of the Director (A) observed that there was no vigilance angle involved because of which the draft charge Sheet was not issued to the Applicant.

**2.10** On 16.10.2014, the Administrative officer in the office of the Director (A) made a file noting to the effect that the Regional Director, CGWB (CI) Nagpur (R-3) had recommended transfer of the applicant out of Pune and therefore the file was once again put up for reconsideration. On 21.10.2014 there was a file noting to the effect that the applicant made representations directly to higher authorities. Thereafter, several other file notings were made for issuance of charge

sheet to the applicant but the same remained inconclusive. No charge Sheet has been issued to the applicant in pursuance of the said noting.

**2.11** The above events show that there is official malice against the applicant. The malice of the said official of R-2 resulted in issuance of impugned order dated 22.03.2016, by which the applicant is sought to be transferred from CGWB, SUO, Pune to GGWB, MER, Patna. The transfer of the applicant is shown to have been ordered in public interest. The said transfer order dated 22-03.2016 has not yet been officially served on the applicant. However, the same is uploaded on the website of R-2 which the applicant noticed on 25.03.2016.

**2.12** Vide the same order one Ms. Anu Radha Bhatia Senior Hydrogeologist (Scientist 'D') is shown to have been transferred from Shillong to Pune. However, while the applicant is in the grade of Scientist 'A', the said Ms. Bhatia occupies much higher position of Scientist 'D'.

**2.13** R-1 has circulated transfer policy of Group 'A' s. 'B' officers of the CGWB vide letter dated 17.04.2009. Para 4 of the said transfer norms provides that the officers staying at a place for longer period (more than 15 years) shall be transferred in such a

manner that the desired level of redeployment of officers is achieved without dislocation of work. It is further provided that normally such officers (completing 15 years) will be considered for transfer first who have served longest total stay at a particular place.

**2.14**      Applicant made representation to the Chief Grievance Officer in the Office of R-1 on 29.03.2016 against the Transfer Order dated 22.03.2016.

**2.15**      There are 2 violations of the said transfer norms in the case of the applicant. Firstly, the applicant has not completed more than 15 years at Pune. Applicant was transferred and posted at Pune in November 2003 and has completed 12 years of stay at Pune as against 15 years envisaged in the policy. Applicant therefore does not qualify for transfer as per the transfer norms. Secondly, there are 6 other Scientists in the Central Regional Office, Nagpur who have completed longer stay than the applicant at their respective places. Mr. P.K. Jain, Scientist-D is at Nagpur for more than 20 years. Mr. Saurabh Gupta, Officer-In-charge and Scientist-D has been at Pune for almost 13 years. Mr. Bhushan Lamsoge, Scientist-D has been at Nagpur for more than 13 years. Mr. Sandeep Waghmare, Scientist-A has been at Nagpur for more than

13 years. Mr. Rahul Shende, Scientist-A has been at Nagpur for more than 13 years.

**2.16**      Applicant has 2 school going children, aged 8 and 13 years, studying at Pune. Applicant is also still undergoing treatment for injuries caused by accident and suffers acute Neurosis and pains at frequent intervals and the Applicant is required to take rest for few days in order to recover as part of pain management by specialists. Hence, for personal reasons/ compassionate grounds also the transfer order is fit to be set aside.

**3.**      In reply to the OA, the respondents have denied and disputed the contentions of the applicant.

**3.1**      The transfer order has been issued as per existing transfer norms according to which minimum tenure at a station is 3 years and longest tenure can be 15 years. The impugned transfer order was issued as per existing policy and the said policy has never been challenged by the applicant. All transfer orders once issued & dispatched are also uploaded in CGWB website. The transfer has been effected after due consideration of organization's functional requirements by the Competent authority. The transfer of Ms.Bhatia has nothing to do with the transfer of the applicant.

**3.2**      The transfer order is dated 22.03.2016. The

OA was filed by the applicant on 31.3.2016. Applicant never represented to the competent authority against the impugned transfer order. As such, he has not exhausted the available channel for such redressal of his grievance. Thus, the OA is barred by the limitation prescribed in Section-20 of the AT Act, 1985. Hence, the OA is not maintainable.

**3.3** The Grievance Petition dated 29.03.2016 against the impugned transfer order cannot be processed, in view of the instructions contained in Section- 19(4) of the AT Act- 1985. However, it may kindly be taken into cognizance that the applicant has filed the instant OA without even waiting for response to it.

**3.4** The contention of the applicant regarding the disability certificate and his undergoing treatment are not relevant to the transfer matter involved in this OA.

**3.5** R-3, Regional Director, CGWB, CR-Nagpur, has complained in detail that applicant is a habitual offender as far as his declining to do the assigned work and raising non-existent issues at various platforms are concerned. The Grievance Petitions referred by the applicant have no relevance to the impugned transfer. However, it is submitted that the

Grievance Petitions dated 22.5.2013, 5.11.2014 and 10.6.2015 of applicant have duly been addressed and have been settled as per reply issued to him by CGWB vide their letter dated 25.2.2016, after affording him an opportunity to be heard personally on 18.08.2015/19.08.2015 by a three-member committee constituted vide CGWB'S letter dated 11.08.2015 & 12.08.2015. A copy of the minutes of the said personal hearing dated 19.08.2015 is submitted as Annexure-VI.

**3.6**        Applicant is trying to mislead the Tribunal by mentioning the OA No.3761/2013 before CAT, Principal Bench, New Delhi, because the applicant is not the lone applicant of that OA No.3761/2013. Instead, 14 (Fourteen) officers (including applicant) are applicants in the said OA. None of them except applicant has ever cited that OA as reason for bias in minds of the respondents. Thus, contention of the applicant that the said OA has created any bias in minds of the Respondents against him is not acceptable.

**3.7**        Applicant himself has accepted that he has been graded '8' in his all APARS except for the year 2014-15, in which he has been graded '6'. Thus applicant's allegation that he has not been communicated APARS for the years 2012-13 and 2013-14 is not acceptable.

**3.8** The notes portion of a file does not contain only the decisions, but also reflects the process through which a decision is finally made. Hence, the submission made by the applicant himself that Director (A) observed on 25.09.2014 that there was no vigilance angle involved in that matter, sufficiently explains that there was no ill-motive on part of the respondents to frame any charges.

**3.9** As regards the personal difficulties, it is stated that school going children of the Central Government employees can get admission at Kendriya Vidyalaya, Central school, which is not difficult.

**4.** In the rejoinder filed by the applicant the applicant has contended that the respondents have not clarified as to how 6 other Scientists in Central Regional office, including his supervising officer, who initiated that transfer proposal, who have completed longer stay than the Applicant in their respective places have not been transferred.

**4.1** As regards para 2 and 4 of the transfer norms, para 2 deals with the situation where the officer has to work at a particular station for minimum number of years before seeking his transfer. Para 2 provides that before completion of 3 years, no officer can request for his transfer. Thus para 2 puts an

embargo on the officer seeking transfer before completion of 3 years of tenure. The protection from administrative transfers is at para 4, which clearly provides that officer is to be considered for transfer on completion of 15 years of service, with a caveat that officers with longer stay be transferred first. Thus Para 2 of the transfer norms is applicable to request transfer whereas Para 4 is applicable for administrative transfers. The applicant has not requested for transfer. It is thus clear that Applicant is not due for transfer as he has not completed 15 years of stay at Pune.

**4.2** The respondents themselves have admitted that Ms. Bhatia has not been transferred vice the applicant. The applicant understands even though there is no post corresponding to Scientist-D at Suo, Pune for Ms. Bhatia, she is not only brought to Pune but she is drawing salary against non-existing post. The respondents themselves have admitted that no other officer has been posted against the Applicant at SUO, Pune. There is already one vacant post of Assistant Hydrogeologist at Pune from the last more than 10 years.

**4.3** The contention of the respondents that the OA is barred by limitation can only be termed as

ludicrous. The objection of non-exhaustion of available channel is completely independent of the objection of limitation. There is no statutory remedy available against the transfer order. Nonetheless, the applicant made representation against the transfer order before approaching this Hon'ble Tribunal.

**4.4** As regards the disability certificate the entire circumstances pertaining to the matter has been submitted before the Tribunal only to show that this has led to creation of bias in the minds of respondents, as a result of which the transfer order was issued.

**4.5** As regards the reliance of the respondents on letter dated 09.07.2014, the Applicant submits that the respondents should first clarify as to whether the said letter dated 09.07.2014 is the basis for applicant's transfer. If the decision to transfer the applicant is taken on the basis of the said letter dated 09.07.2014, the transfer of the applicant is stigmatic and punitive and deserves to be set aside. If on the other hand the said letter dated 09.07.2014 is not a reason for the applicant's transfer, the respondents cannot rely upon it for the purpose of prejudicing the mind of this Tribunal. The action of R-3 branding the applicant, "habitual offender" in the said letter is

totally irresponsible and deserves to be deprecated.

**4.6** The reason why the applicant has become unwanted element at SUO Pune needs to be appreciated. Applicant used to function as Drawing & Disbursing Officer (DDO) at SUO Pune. In his capacity as DDO, the applicant had objected to leaves availed by Shri S.S.P. Mishra, Superintendent and made a reference to R-3 vide letter dated 04.06.2015. Applicant had objected to withdrawal of an amount of Rs. 8.00 Lakhs by Shri Mishra by converting the period of his absence to that of regularized leave. On account of objection by the applicant, Shri Mishra is facing possible recovery of the said amount. Shri Mishra deliberately made false complaint against the applicant for the purpose of moving the applicant out of SUO, Pune. These aspects have been pointed out by the applicant in his Grievance Petition dated 10.06.2015. The applicant's objection about illegal regularization of the absence period of Shri Mishra was upheld by the Audit authorities and the Income Tax Department directed recovery of Rs. 72,000/- from Shri Mishra.

**4.7** In order to save himself, Shri Mishra sought transfer to Bhopal and was replaced by Shri Saurab Gupta (R-4) who became the Supervisory Officer of the applicant. R-4 unfortunately saw the applicant as a

trouble maker and started misguiding R-3. R-4 is already facing inquiry into the allegation of HRA manipulation and feared that the Applicant might create further problem to him. This is how initially Shri Mishra and later R-4 started creating evidence against the applicant to the effect that the Applicant was not performing his duties.

**4.8** As regards performance, except one APAR written by Shri Mishra for the year 2013-14, the applicant has been consistently graded 'Outstanding' (8 marks) by his superior officers. Therefore, the reference to letter dated 09.04.2015 of R-3 is totally misleading.

**4.9** R-3, who wrote the letter dated 09.07.2014, subsequently appreciated the applicant in Jalkranti Abhiyan while reviewing the APAR of the applicant for the year 2015-16. Respondents have conveniently suppressed the said appreciation letter and have highlighted only the adverse letter dated 09.07.2014. Therefore, it is denied that the Grievance Petition referred to by the applicant has no relevance to the impugned transfer order as his appeal petition/rejoinders against orders in the Grievance Petition would show.

**5.** In the Sur-rejoinder respondents have

submitted that the transfer is a condition of service and transfer norms do not stipulate that the transfer is to be executed on the basis of seniority.

**5.1** The transfer order was initiated by the competent authority as per the prevailing practice and issued with the approval of Chairman, CGWB. The service record of applicant has no reference to the transfer order.

**5.2** Applicant was transferred on account of public policy and exigencies of work and it is not necessary to complete 15 years of stay of Pune. The allegation of applicant against the 6 other officers who have completed more number of years stay in Region and that they should have been preferred for the transfer is not tenable, as he has no right to say so.

**5.3** The Applicant is not scientist, whereas Ms. Anuradha Bhatia is employed as Scientist - D. Therefore, Ms. Anuradha Bhatia had agreed to take additional work of the applicant at Pune. Both Ms. Bhatia and the Applicant were doing field work. Therefore it was convenient for Ms. Bhatia to take up the additional work of the Applicant.

**5.4** The contention of the applicant that transfer of applicant from Pune would result in creation of 2 vacancies SUO, Pune is denied. It is denied that the

Applicant was not transferred in public interest as alleged. It is further denied that the applicant had become an eyesore and the transfer order was issued without any basis. The OA is barred by limitation.

**6.** In the additional affidavit filed by the respondents it is submitted that at Pune there are two sanctioned post of Assistant Hydrogeologists. One being occupied by applicant and the other posts is vacant. The said post is vacant for the last 10 years, since there is no requirement of Assistant Hydrogeologists at Pune. There are 5 Hydrogeologist working at Pune against limited projects in hand.

**6.1** In CGWB, CR, Nagpur is an independent office and the said Regional Office is under the control of CGWB, CHQ, Faridabad. Whereas Pune is a state unit separately working and is not under the administrative control of Nagpur Office.

**6.2** As per the information received from the Ministry of Water Resources, there was requirement of a Asstt. Hydrogeologist at Patna and the Regional Director, CGWB, NER, Patna had submitted requisition for deployment of sufficient staff against available vacancies.

**6.3** Shri Sandip Waghmare, Scientist A, Shri Rahul Shinde, Scientist A, who have admittedly put in more

than 13 years are in an office which is Nagpur based and not Pune based, so as to count for seniority. Water resource is a state subject and both the centers are located in Maharashtra. As such the Regional Office of Nagpur and state unit of Pune are two different independent administrative units.

**7.** In the reply filed by the applicant to the additional affidavit of the respondents (filed on the direction of the Tribunal), the applicant has submitted that the contention of the respondents that there are 2 sanctioned posts of Assistant Hydrogeologists is misleading. There is common cadre of all the scientists posted in the RO and those posted in the State Unit Office (SUO) at Pune. The scientists posted at SUO Pune are included in the sanctioned strength of the RO. The scientists and employees posted in RO and SUO are interchangeable and are deputed throughout the State of Maharashtra & UT of Dadra & Nagar Haveli.

**7.1** Even if it is assumed for the sake of argument that separate sanctioned posts is maintained in respect of the SUO at Pune, it is submitted that 1 post of Assistant Hydrogeologist is held by the Applicant and the other is lying vacant for last 8 years and as contended by the Respondents. The said vacant Post of Assistant Hydrogeologist is operated by posting Junior

and senior Hydrogeologists at Pune. The contention that there is no requirement of Assistant Hydrogeologists at Pune is totally incorrect. What the Respondents are doing is to utilize all the scientists of different grades for discharging the same duties, which means that Assistant Hydrogeorogist, who is a Scientist-A and Sr. Hydrogeologist, who is Scientist-D perform same duties and responsibilities. There are 06 Hydrogeorogist at Pune.

**7.2** As per the requirement at SUO Pune, there is a provision for posting of 1 Senior Hydrogeologist and 2 Junior Hydrogeologists and 2 Assistant Hydrogeologists. As against the said requirement, currently 3 Sr. Hydrogeologists in the rank of Scientist-D are functioning in Pune, which includes Ms. Bhatia, transferred from Shillong to Pune, by the impugned order dated 22.03.2016. It is also pertinent to note that except 1 Senior Hydrogeologist, R-4, who is Officer Incharge for SUO, Pune, the rest of the scientists (2 Sr. Hydrogeologists, 2 Junior Hydrogeologists and 1 Assistant Hydrogeologist) discharge the same duties and functions. Therefore, the contention that there is no requirement of Assistant Hydrogeologist at Pune is totally misleading.

**7.3** The further contention of respondents that

there are limited projects in hand is also false and misleading. The respondents are unable to look after the work load of SUO, Pune with 6 Hydrogeologists and therefore Hydrogeologists from Regional Office at Nagpur are frequently deputed to look after districts near Pune. The projects relating to Konkan area, which are required to be looked after by Pune office, are usually managed by deputation of Hydrogeologist from Regional Office, Nagpur. Such deputation is a normal practice.

**7.4** The file noting dated 16.06.2016 produced by the Respondents do not reveal any reason why the applicant is picked up for transfer. Furthermore, file noting has proposed transfer of the applicant not at Patna but at Shillong, which shows that there was no necessity of posting the applicant at Patna. Apart from the fact that absolutely no reason is specified in the file noting for proposing transfer of the applicant to Shillong, the Respondents arbitrarily changed the said proposed posting of the applicant with ulterior motive of denying choice posting to the applicant after completion of 2 year tenure at Shillong. Shillong is considered as a hard station and an officer completing tenure of 2 years at Shillong is entitled for choice posting at the end of such tenure.

With a malafide intention of denying even such choice posting to the applicant, the place of proposed posting of the applicant was arbitrarily changed from Shillong to Patna without specifying any reason. The file noting do not bear out any necessity of posting the Applicant at Patna. The file noting thus clearly suggest that the transfer has been used as a tool for punishing the applicant.

**7.5** Respondents follow the procedure of seeking choice posting from the officers who complete requisite tenure as laid down in the policy. No such choice was sought from the applicant, obviously because he has not completed his tenure and was not due for transfer. The file noting shows an insertion below the name of the applicant, "longer stay >12 years". While making the said remark, the word Shillong has been struck off and changed to Patna. While making the said remark the Respondents have not bothered to check whether the applicant had the longest stay in the RO. The said places of Shillong and Patna in the file noting do not match with the places of Raipur, Faridabad, New Delhi or Jhansi proposed in the letter dated 10.07.2014. All these aspects show clear malafide and arbitrariness while taking a decision to transfer the applicant.

**7.6** The contention of the respondents that CRO

Nagpur is an independent office whereas Pune is a State Unit separately working and not under the administration control of Nagpur office is utterly false. CRO, Nagpur and State Unit Office are not 2 independent offices. SUO, Pune is under the administrative control of Nagpur office, where R-4 reports to R-3. This is clear from the letter of the R-3 dated July 2014 by which he had recommended transfer of the applicant from SUO, Pune. If the Regional Director, Nagpur was not administratively controlling the applicant, the respondents must explain as to how R-3 sought applicant's transfer out of Pune.

**7.7** The Annual Action Plan (AAP) shows that Nagpur office decides the action plan to be implemented in the entire CR including SUO Pune. While replying to an issue raised by MP Shri Dilip Gandhi, vide letter dated 06.06.2012 about the activities taken up for drought, the Chairman, CGWB directed R-3 to give comments on the said letter, which was forwarded by CRO vide letter dated 01.01.2013. The said letter stated that the jurisdiction of the CR Nagpur is entire State of Maharashtra and UT of Dadra and Nagar Haveli and officers posted at CR Nagpur and SUO Pune can be engaged anywhere within this jurisdiction. The circular dated 01.12.2016 shows that Mr. Sandeep

Waghmare was directed to look after the projects in Ratnagiri and Sindhudurg districts.

**7.8** The decisions in regard to implementation of the projects in the entire State of Maharashtra and UT of Dadra and Nagar Haveli are taken by CRO Nagpur. It is the CRO, Nagpur who decides which officer shall discharge duties on which projects. In this regard, OM dated 02.03.2017 was issued by R-3 calling for reports from all the officers. A Committee was formed vide the letter dated 16.03.2016 which included officers of the CR as well as SUO Pune.

**7.9** Applicant has also produced circular dated 15.07.2016 by which schedule for monitoring was ordered for various districts. This was decided by the CRO which included all the districts of Maharashtra including districts coming under SUO, Pune.

**7.10** Several scientists working in the Central Region, Nagpur are routinely deputed to execute projects in the districts which are supposed to be managed by SUO Pune. Similarly the Scientists posted in SUO Pune are also routinely deputed to execute projects coming in the purview of Central Region, Nagpur. Applicant himself has been deputed during the years 2011-12 and 2012-13 to locations in Dist. Yavatmal, coming under the purview of CRO, Nagpur. The applicant

has practically worked at every possible district throughout Maharashtra as per directives issued by the CRO, Nagpur from time to time.

**7.11** The ACRs/ APARs of Scientists posted in SUO Pune are written /reviewed by R-3. Even some of the ACRs of the applicant are written by R-3. All the decisions with regard to execution of projects, allotment of manpower in the entire State of Maharashtra and UT of Dadra & Nagar Haveli are taken by R-3, being the Administrative Head in respect of the entire State of Maharashtra and UT of Dadra & Nagar Haveli. A much lower rank level officer on the post of Senior Hydrogeologist is designated as Officer Incharge in SUO Pune. The said officer incharge R-4 works completely under control of R-3. The officer incharge of SUO Pune does not report directly to Head Office at Faridabad but reports to Regional Director, Nagpur.

**7.12** The Respondents have failed to produce any such requisition of the Regional Director CGWB, NER, Patna. To prove this is a false contention one Shri K.A. Nambi, Assistant Hydrogeologist was transferred out of Patna and posted at Chennai on 14.7.2015. If at all there was any shortage of Assistant Hydrogeologist at Patna, the respondents ought not to have transferred Mr. K.A. Nambi out of Patna. Though, the respondents

failed to produce any requisition letter, the applicant has a copy of letter dated 04.01.2016 of Regional Director of Patna by which staff position at Regional Office Patna was communicated to the Head Office as per the request of the Head Office. This is a routine communicated by Regional Director of Patna by his letter dated 04.01.2016. The said letter dated 04.01.2016 can, by no stretch of imagination, be treated as any requisition. In any case the file noting do not refer to any such requisition. Furthermore, the file noting does not say that the Applicant is being posted at Patna in view of requisition of Regional Director, Patna.

**7.13** Further, after passing of the impugned order the respondents have issued 2 more transfer orders on 11.05.2016 and 16.09.2016. By order dated 11.05.2016, Shri Sudama Upadhyaya, Assistant Hydrogeologist has been posted at Patna. Similarly, by order dated 16.09.2016 Shri Pankaj Kumar, Assistant Hydrogeologist has been posted at Patna. This shows that both the vacant posts of Assistant Hydrogeologists at Patna have been filled up. Patna office is already working as per its full sanctioned strength. As per the sanctioned and actual strength communicated vide letter dated 04.01.2016, as against 6 sanctioned Junior Hydrogeologists, 8 Junior

Hydrogeologists are working and this position continues as of date. Similarly, as against one sanctioned post of Sr. Hydrogeologist, 2 Sr. Hydrogeologists are posted. Though, 5 posts of Assistant Hydrogeologists were shown to be vacant as on 04.01.2016, 2 Assistant Hydrogeologists have been posted at Patna vide orders dated 11.05 .2016 and 16.09.2016. Therefore, as against the requirement of 1 Senior Hydrogeologist, 6 Junior Hydrogeologists and 5 Assistant Hydrogeologists (12 Scientists), 12 Scientists are actually working at Patna.

**8.** In the affidavit in reply filed by the respondents, respondents have submitted that posts are allocated at CGWB, CR, Nagpur and CGWB, SUO, Pune as per the allocation of Scientific Cadre issued for the year 2016-17 in CGWB.

<b>Name of the Office</b>	<b>Name of the Post</b>	<b>Sanctioned strength</b>
CGWB, CR, Nagpur	Superintending Hydrogeologist	1
do	Senior Hydrogeologist	5
do	Junior Hydrogeologist	10
do	Assistant Hydrogeologist	6
do	STA (Hydrogeologist)	2
CGWB, SUO, Pune	Superintending Hydrogeologist	-
do	Senior Hydrogeologist	1
do	Junior	2

	Hydrogeologist	
do	Assistant Hydrogeologist	2
do	STA (Hydrogeologist)	-

**8.1** The above posts have been allocated Office-wise on the basis of their work load. The duties and responsibilities of the above mentioned posts are different and they are performing their duties. At present 50 posts of Assistant Hydrogeologists are lying vacant. Resultantly all the Regional and State Unit Offices of the Board are facing acute shortage of staff. The staff of Hydrogeology discipline is distributed from the existing strength as per the office work load, which is covered under the purview and discretion of Head of the Department.

**8.2** R-3, may be the working Head of entire Maharashtra Region including U/T of Dadra & Nagar Haveli, but does not have powers to transfer officers/officials, posted in CGWB, Nagpur and CGWB, SUO, Pune. Hence, as per the exigency of the Government work respondents may assign any officer/ officials to perform a specific task on tour basis. The transfer and posting of officers/ officials of CGWB, Nagpur and CGWB, Pune is the prerogative of Central/Hq. Competent Authority.

**8.3** It is denied that all the decisions in respect of project work and transfer are taken at the Head Quarters at New Delhi. The respondents have relied upon the judgment of the Hon'ble Supreme Court in case of **Union of India v/s. Sh. Murlidhar Menon delivered on 04.08.2009** in support of their contentions.

**9.** We have gone through the O.A. alongwith Annexures A-1 to A-8, Rejoinder along with Annexures A-9 to A-11 and reply to additional affidavit filed by the respondents along with Annexure A-12 to A-19 on behalf of the applicant.

**10.** We have also gone through Annexures R-1 to R-6 of the Reply, Sur-rejoinder on behalf of R-1 to R-4, Additional Affidavit of respondents and reply to the submissions made by the applicant; filed on behalf of the respondents.

**11.** We have heard the learned counsel for the parties and carefully considered the facts, circumstances, law points and rival contentions in the case.

**12.** The preliminary objection is that the applicant rushed to the Tribunal without submitting any representation and hence OA is premature and not maintainable under Administrative Tribunals Act.

However, the applicant did file a representation on 29.3.2016 and filed this O.A. on 31.3.2016 and sought interim relief. The Tribunal on finding a *prima facie* case, granted *ex parte* interim relief.

**13.** The other preliminary objection of limitation by respondents is a mis-application of the provisions of limitation under A.T. Act, 1985 pertaining to delay and laches, since applicant wasted no time in approaching the Tribunal for interim relief, which was also granted. The provision of limitation is not attracted.

**14.** On merits, the main contentions for consideration of the Tribunal is whether the applicant's transfer is punitive and whether there was any malafide on the part of R-3 and/or R-4 in getting the transfer effected through the impugned order and whether such order was illegal, improper, incorrect or arbitrary and hence whether the same is liable to be quashed and set aside.

**15.** As stated earlier, it is settled law that so far as transfer of Government employees is concerned, it is an inherent incident of service and the Government employee has no vested right to continue at the same place of his choice forever or

till his retirement. The employer reserves right to transfer any employee considering the office exigency or in public interest, especially when appointment is based on All India level. However while doing so, it is also obvious that if transfer policy/guidelines/statutory rules are framed governing the transfer of employees in any department, there should be no violation of any of those provisions.

**16.** Further it is the settled law that the Courts or Tribunals while exercising the power of judicial review when transfer order is challenged, shall not lightly interfere with the transfer order, unless mala fide against the Competent Authority issuing the transfer order are pleaded and proved, or when competency of Authority issuing the transfer order is challenged.

**17.** Keeping in mind the above referred settled principles of law regarding transfer, we shall now turn to consider the legality, propriety or corrections of both the impugned orders of transfer.

**18.** The circumstances leading to the transfer

needs to be recounted in chronological sequence to see if the said circumstances had any nexus with transfer of the applicant, considered by applicant as punitive.

**19.** The applicant met with a road accident on 18.02.2013 while on duty. Applicant sought for disability (special) leave. On his request being rejected, the applicant escalated his grievances to the Central Public Grievances and Monitoring System (CPGMS) on 22.5.2013. Thereafter, a reference was made to the Sassoona General Hospital Pune, who did not certify the applicant as being eligible for issue of disability certificate vide report dated 03.08.2013 and by which the applicant was only declared fit to resume duties.

**20.** In the meantime, the applicant approached the Commissioner for physically disabled (CCPD) on 26.08.2013 following the above denial for issue of disability certificate. It transpires that on the intervention of CCPD applicant's case came up for reconsideration before respondents. Thereafter, a medical certificate dated 30.01.2014 having validity up to 30.01.2015 was issued certifying disability of L/H upper limb weakness upto 55% disability, stating also that the medical condition is 'temporary not progressive and likely to improve till the next reassessment'. The above information emerges from the

2<sup>nd</sup> grievance petition/bills is/are still kept pending, dt. 5.11.2014 before CPGMS, in which it is alleged by the applicant that his petition is still kept pending notwithstanding the orders of CCPD, and issue of certificate of 30.1.2014. It is also alleged that the applicant has been discriminated against, even as other similarly situated persons were given a favourable treatment.

**21.** In July 2014, R-2 addressed a letter to the office of R-3 i.e. CGWB Head Quarters complaining about applicant's non-compliance of orders/avoidance of orders to go to outstations for field duties, invariably citing medical grounds resulting from the accident. Citing all the instances R-3 concluded that the applicant is a habitual offender. This is completely objectionable and improper, as such language is the language used only when a person is proved to have been involved in criminal acts and held guilty of criminal acts. This damaging view was also taken behind the back of applicant without the right to be heard causing prejudice. R-3 also took an adverse view against applicant that he had approached higher authorities for redressing his grievances and his grievance has come to the notice of R-3 only on receipt of information from the Staff Grievances Officers CGWB

Head Quarters. He questioned 'the audacity' of the applicant in approaching the higher authorities by, by passing him. However, the above view of R-3 is contrary to the contents of the petition dated 22.5.2013, before the CPGMS, from which it is clearly evident that applicant approached CPGMS, only when he was made to run from pillar to post, to get special leave, transport facility and attendants, which he failed to get, and without even a rejection of the request. However, troubled by the applicant's non-compliance of the orders to attend field duties, R-3 recommended the transfer of the applicant.

**22.** It is evident from the noting on file that following R-3's letter of July, 2014, (received by applicant under RTI), R-2 himself directed that charge sheet be prepared for non performance of assigned duties, which means that R-2 was not in favour of the transfer proposal of R-3. Note-sheet clearly shows that the grounds for issuing the charge-sheet was linked to the very grounds raised in the letter dated July 2014 linked by R-3 to transfer of applicant. However, it must be stated that if R-2 wanted that disciplinary proceedings should be initiated, then R-2 was within his right to propose such course action, being legal.

**23.** The draft charge-sheet was sent to vigilance but vigilance returned it saying that applicant's case does not constitute any vigilance angle and hence keeping in view the proposed transfer of the applicant by R-3, administrative action was suggested for conducting enquiry under disciplinary rules. This shows that office of R-2 and vigilance proposed the above correct and legal alternative instead of accepting R-3's recommendation for transfer of the applicant. Therefore, original documents were sought by O/o. R-2 from R-3 for framing/issuing of charge-sheet, which was not forthcoming. In the interim, when he came to know about "adverse" circumstances building up at the instance of R-3, applicant filed the 2<sup>nd</sup> grievance petition before CPGMS on 5.11.2014. This was done to show that R-3 was somehow bent upon transfer alone, although it did not materialize then in 2014, it materialized in 2016 by the impugned order.

**24.** It is to be noted that following CCPD's intervention a valid disability certificate was issued on 30.1.2014 (valid till 30.1.2015) R-3's actions, including ignoring/not paying heed to, the above disability/medical certificate of competent authority, R-3 still recommended applicant's transfer as the only option without any attempt to redress the grievance of

applicant. He failed to follow up, on the other alternative, of initiating disciplinary proceedings, as proposed by R-2/vigilance. By non-production of records, R-2 was prevented from taking the proposal for disciplinary action to its logical conclusion and the transfer proposal remained dormant. R-3 persisted in obstructing a right course of action (between 2014 to 2016), suggested by R-2 and did not relent till his earlier recommendation of July, 2014 for transfer of applicant bore fruit with R-2 in March, 2016, when R-4's proposal for applicant's transfer through R-3, was approved by R-2 and the impugned order was passed.

**25.** The notings on records on the transfer provided by respondents on the direction of the Tribunal also makes some of the submissions in support of their contentions of little help. The notings are extracted as below :-

"Sub :- Transfer application in respect of Scientific Officers.

The following Scientific officers posted at North Eastern Region have requested to consider their transfer requests on sympathetically ground ground as they have completed more than 03 years service at North East Region.

- i) Ms. Anuradha Bhatia, Sr. Hg. (Scientist 'D') CGWB, SUO, Shillong.
- ii) Sh. Biplab Ray, Sr. Hg. (Scientist 'D'), CGWB, SUO, Shillong.

iii) Shri N.K.Jatav, Jr. Hg. (Scientist 'B'), CGWB, NER, Guwahati

iv) Shri K.Ramanand, AHG (Scientist 'D'), CGWB, NER, Guwahati".

In this context, it is stated that as per the transfer policy of CGWB, duly approved by the Ministry, which stipulated that those who have served in the North Eastern parts island/Srinagar for stipulated period of 2-3 years. This facility would be regulated in accordance with the instruction issued by the Government from time to time.

In view of the above, we may consider their transfer as proposed as under :-

Table-I

Sl. No.	Name of Officer	Designation	Total stay at present place of posting	From	To
1	Ms.Anu Radha Bhatia	Sr.Hg. (Sc. 'D')	06 years	SUO Shillong	SUO, Pune
2	Shri Biplab Ray	Sr.Hg. (Sc. 'D')	05 years	SUO Shillong	NER Guwahati
3	Shri N.K. Jatav	Jr. HG. (Sc. 'B')	05 years	NER, Guwahati	NCR Bhopal
4	Shri K. Ramanand	AHG (Sc. 'D')	03 years	NER, Guwahati	SECR, Chennai

In addition to the above, we may also transfer the following scientific Officers for smooth functioning of the respective officers.

Table-II

Sl. No.	Name of Officer	Designation	From	To
1	Shri J.P. Gautam	Sr.Hg. (Sc. 'D')	SUO Allahabad	NR, Lucknow
2	Shri U.V.Donde	AHG	SUO, Pune	SUO, Shillong

In view of the above, we may request the Chairman, CGWB being the Competent Authority to kindly accord the approval as proposed Table-I and Table-II above in public interest.

Submitted please.

~~O/S please~~  
Sd/-  
16/3/16  
RD

Sd/-  
(SOURABH GUPTA)  
SCIENTIST 'D'  
Central Ground Water Board,  
GOI, Ministry of Water  
Resources, State Unit  
Office, Pune-44.

1. Please refer preceding note
2. Following postings are recommended

"(a) Ms.Anuradha Bhatia, Shillong to Pune

(b) Sh. J.P.Gautam, Allahabad to Lucknow

(c) Sh. U.V.Dhonde, Pune to ~~Shillong~~ Sd/- 21.3.16  
(longer stay>12 yrs) Patna Sd/- 21.3.16

(d) Sh. Biplab Ray, Shillong to Guwahati

For approval as above please. Sd/- RD dt. illegible

Chairman Pl.

Approved  
Sd/-  
21.3.

"

**26.** It is evident from the above that SUO, Pune set out to process request transfers of officers on completion of minimum tenure, as applicable for officers posted to the North-Eastern Region (NER) being hard area with a minimum requirement of only two to three years tenure. It is not clear, how SUO, Pune could process cases of transfer of officers working in the NER since his jurisdiction is only for Districts coming under the purview of SUO, Pune. It is not also clear as to how this note was put up to Regional Director, Pune of CRO for the said purpose and how R-3 recommended transfers for those posted outside Pune

Region seeking transfers outside NER, particularly to Chennai, Bhopal etc., making it a roving proposal, as if RD had all India jurisdiction SUO, Pune could only recommend for the jurisdiction coming under the purview of SUO, Pune and R-3 can only recommend for his jurisdiction i.e. central region covering SUO, Pune to R-2. Hence, the actions of SUO, Pune and R-3 dealing with request for transfer of officers seeking transfer outside NER is not explained. Therefore, for unexplained reasons, not being contextual to the nature of proposal initiated, applicant's name was brought in for transfer not in place of any transferred officials but to another place i.e. Patna without any requisition from RD, Patna. R-3 wrote against applicant's name and struck out Shillong and wrote "longer stay > 12 yrs" and wrote Patna on 21.3.2016 and initialed again by R-3, to show the change made by him. We are not inclined to conjecture as to who/what triggered that change. The fact is what R-3 wanted by way of his letter of July, 2014 got fulfilled at that point of time in 2016 without initiating disciplinary action as earlier directed by R-2.

**27.** There is no evidence that any assessment of requirement at any of the destination posting in the transfer list was assessed including that of Patna

where applicant was posted, as only transfers based on request from those in the NER (hard area) to soft area was considered. It was not based on requirement/need/requisition of regional offices concerned. Hence, apart from the four transfer requests one person was posted from Allahabad to Lucknow (for the purpose of "smooth functioning"). In a similar manner, applicant's name also figures for transfer to Patna under the general purpose of smooth functioning, but on the specific ground of longer stay of more than 12 years.

**28.** In this connection, applicant has contended that SUO, Pune is under the administrative control and authority of R-3. In respect of this contention, he has succeeded in proving beyond any reasonable doubt in his rejoinder based on the instances quoted and the documents attached to show that R-3 was in fact the controlling authority for SUO, Pune. Applicant has shown that R-3 has the power to depute a senior, junior and Assistant Hydrogeologist interchangeably in any of the offices including SUO, Pune depending upon functional requirements. The respondents have admitted to the same, except to contend that R-3 can only recommend transfers, but not effect transfers. This would make no difference to the allegations of mala

fide to the applicant. R-3 was at the top of the chain of command in all administrative matters in the CRO, Nagpur and irrespective of availability of Hydrogeologists at various levels, he had the power to deploy them seamlessly to meet the gaps/requirements and fulfill targets of AAP for which he was answerable in his region, including SUO, Pune. Hence, any contention regarding contradicting "interchangeability" theory is baseless even as the contrary is true and relevant for adjudicating this O.A. In the said chain of command the applicant came under the control of R-3 through SUO, Pune headed by R-4 who worked under the overall control of R-3 and did not report to HQs directly. Hence, applicant had to be under the control of R-3. In the view of the Tribunal there is no doubt on this issue. This conclusion is based not only on the contentions in the rejoinder filed by the applicant, but also from R-3's own notings regarding transfer in July, 2014, where he took a definite view and prevented even the directions of R-2 in not following the directions of R-2 to initiate disciplinary action against applicant. His single minded noting for transfers of applicant in 2014, managed to re-surface in March, 2016 when the impugned order was passed. Linked with this, the noting of

transfers of others posted outside his region in jurisdictional excess was used to create a context for applicant's transfer, by a roving, all India based transfer proposal.

**29.** In the light of the above, had R-3 and R-4 (assuming that they had the power to deal with request transfers of officers of the NER etc.) only dealt with the category of request transfers, it would still be deemed to be within the purview of para 2 of the transfer policy, since those in NER had completed tenure in hard area and could request to move out on completion of tenure. However, para 4 of the policy was invoked by R-3 in the case of applicant in the said file notings. This para pertains to the maximum tenure of 15 years for an officer irrespective of the level of Hydrogeologists. Hence, before declaring in the notings that applicant had put more than 12 years at Pune, R-3 failed to take into account all those under him in CRO and SUO Pune (he being at the top of chain of command in CR) that had put in longer period than applicant and who should have been considered first, before applicant. This included SUO, Pune himself, who processed the note for applicant's transfer, but who had a tenure of longer than that of applicant. R-3 also ignored those functioning at CRO having tenure longer

than applicant as mentioned in the OA.

**30.** It is concluded that the recommendation of R-3 prevented and resulted in a colourable exercise of authority at the instance R-3, which is not in consonance with para 4 of the policy. It may be that R-2 approved the proposal of R-3, but the mala fide and colourable exercise of authority carried its spirit into order of R-2 and hence the order stood vitiated by his bias against applicant..

**31.** The mission R-3 started in July, 2014 succeeded in March, 2016, by choosing transfer over disciplinary action where only the latter was appropriate action under law. R-3 chose the punitive route over the legal route to deal with applicant's non-compliance of orders by initiating disciplinary action.

**32.** Had disciplinary proceedings been initiated for non-compliance of orders for which R-2 was not devoid of such a prerogative, the applicant and the respondents would have had an opportunity, in accordance with law, to establish the case either in applicant's favour or otherwise by giving applicant reasonable opportunity to answer the charges. By not doing so and coming to adverse conclusions against the applicant including calling him an "habitual offender"

behind the back, prejudice has been caused to the applicant.

**33.** It was not that there was any immediacy or emergency in the matter of applicant's transfer to Patna to fulfill the overall financial requirements and to meet the targets in AAP. There is nothing on record to show this. In fact, R-3 after he sent the letter of July, 2014, allowed the matter to pend on the issue of disciplinary action as per R-2's direction and follow up. Hence, it was not a situation where transfer had to take precedence over disciplinary action.

**34.** The respondents have contended that there was severe shortage of Hydrogeologists in the country, as a whole and R-3, as also other regional heads were given power to seamlessly effect interchangeable deputation i.e. short of transfer, by deploying senior/junior/Asistant Hydrogeologists etc. as appropriate to meet the targets. The transfer policy itself permitted maximum undisturbed stay in either the regional office or in administrative unit of the State for a maximum period of 15 years. This goes to show that R-3 made an exception in the case of applicant to use transfer to punish applicant. Hence, we further conclude that "mala fide in fact" co-existed with mala fide in law on the part of R-3.

**35.** Accordingly, we do not see any further need to go into other issues raised by the applicant in recording non-communication of APARs, his actions as DDO, which affected Shri Mishra etc. creating more scope for allegations of bias. *Prima facie*, the applicant has established that R-3's action resulted in a vitiated, illegal, improper order of transfer.

**36.** Applicant has rightly pointed out one of the possible adverse consequence of the impugned order. Had applicant been posted to NER i.e. Shillong in place of Ms.Bhatia, he could have recovered from the said disturbances after two or three years, as per policy, since North-East was a hard region. What R-3 effectively did by singling out applicant and by wrongly declaring him as having longer stay than 12 years at Pune was to let him embark on another long stay of 15 years at Patna. Since Patna is not a hard region he would have to wait for another maximum tenure of 15 years to be posted out of Patna. There is force in applicant's contention of bias on the part of R-3.

**37.** Further, applicant has cited specific instance of how one Shri Nambi was transferred out from Patna to Chennai during the very period when Regional Director, Patna is attributed to have requisitioned for additional staff. It is true that two more persons

were posted to Patna, subsequently, by which all vacancies are stated to have got filled up. The records of correspondence of Regional Director, Patna in respect of the alleged requisition is not made available by respondent although relied upon. No records are also available to support movement of Shri Nambi, Asstt. Hydrogeologist outside of Patna at that juncture, when RD, Patna is ascribed by R-3 to have sought "in flow" than "out flow" of Hydrogeologists.

**38.** The Tribunal is conscious of the fact that the transfer policy is an incidence of service and it is the prerogative of administration to place officers in such a way so as to meet functional requirements/targets. In the present case, R-3 while trying to show that applicant's transfer was a routine, regular movement, in the light of policy to achieve targets, but it was actually done in violation of para 4 of the policy. Hence, the impugned order was not 'innocent' or 'innocuous'. Such an order is liable to be quashed and set aside.

**39.** The respondents have relied upon the decision of the Hon'ble Supreme Court in **Union of India v. Muralidhara Menon & Anr.** (Civil Appeal of 2009 – Arising out of SLP (C) No.14044 of 2006) dated 4<sup>th</sup> August, 2009. The said Judgment is completely

distinguishable as it pertains to request transfers. Applicant's case is not a case of request transfer, whereas in the above Supreme Court decision, the respondents request transfers were rejected on ground of non-availability of vacancies. Hence, the reliance on the said Judgment does not advance the case of the applicant.

**40.** Accordingly, in the light of above findings, we remit the matter to R-2 to take a considered view in accordance with law, on the matter placed before us by applicant in this O.A. After giving a personal hearing to the applicant and after taking into account all the findings of the Tribunal, R-2 shall pass a reasoned and speaking order either justifying action for transfer of applicant, if transfer is warranted or otherwise in the light of policy. The only point for consideration is that transfer shall not be used as a mode of punishment and should not violate relevant provisions of the policy. The entire exercise shall be completed in twelve weeks from the date of receipt of certified copy of this order.

**41.** Accordingly, the O.A. is allowed. R-3 shall pay a cost of Rs.10,000/- to the Mumbai Legal

Services Authority within a period of one week from the date of receipt of certified copy of this order.

**(Ms. B. Bhamathi)**  
**Member (Administrative)**

**(Arvind J. Rohee)**  
**Member (Judicial)**

**B.**