

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No. 90 OF 2017

Dated this Monday, the 22nd day of January, 2018

***CORAM: HON'BLE SHRI ARVIND JAYRAM ROHEE, MEMBER (JUDICIAL)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (ADMINISTRATIVE)***

Ramakant Gajanan Rane,
NL 5/2/7 Sector 11 Nerul (E),
Navi Mumbai 400 706. ... *Applicant*
*(By Advocate Shri Sangram Chinnappa
instructed by Shri L.C.Kranti)*

VERSUS

1. Union of India, through The Secretary,
Ministry of Defence, South Block,
New Delhi 110 011.
2. Principal Director, Civilian Personnel,
Integrated Headquarters,
Ministry of Defence (Navy)
Sena Bhavan, New Delhi 110 011.
3. Admiral Superintendent
Naval Dockyard, Mumbai 400 001.
4. N.M.Bhoir,
Center No.16, DDSP Department,
Lion Gate, Naval Dockyard,
Fort, Mumbai 400 001. ... *Respondents*
(By Advocate Shri A.M.Sethna)

OA filed on 10.01.2017

Order reserved on 02.01.2018

Order delivered on 22.01.2018

O R D E R

Per : Shri A.J.Rohee, Member (J)

The applicant, who is presently working
as Master-Craftsman (MCM) Rigger Trade at

Centre No.17, MDD and HP Department under the respondent No.3, has grievance regarding the impugned order dated 11.09.2015 (Annexure A-1) issued by the respondent No.2 by which he is transferred on promotion to the post of Chargeman in the same trade at Karwar (Karnataka). He, therefore, approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :-

“8.a) That the promotion cum transfer order dated 11.09.2015 be quashed and set aside so far as it instructs the transfer of the Applicant to NSRY (KAR) Annexure A1.

b.) That this Hon'ble Tribunal be pleased to quash and set aside Staff Minute Sheet dated 23rd November 2016 at Annexure A2.

c) That this Hon'ble Tribunal be pleased to quash and set aside Staff Minute Sheet dated 12th October 2016 at Annexure A3.

d) That this Hon'ble Tribunal be pleased to direct the Respondents to retain the Applicant at Mumbai.

e) For the costs of this Application.

f) For such further and other reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

2. The applicant is the direct recruit as

MCM (Rigger) and is serving at Mumbai under the respondent No.3 since 1988. The respondents have issued transfer policy dated 02.12.2011 (Annexure A-4), which governs transfers through promotion for Technical Supervisors. The applicant mainly relied on the provisions of para 4(b) of the said Transfer Policy, which prescribes that on promotion the empanelled candidates will be given posting as per the seniority against clear vacancies in the same unit and, thereafter, in same station. Out station clear vacancies will be filled up, thereafter. According to the applicant, this provision has been violated by the respondents while granting promotion to the applicant and transferring him to Karwar to the exclusion of his seniors, who were retained at Mumbai.

3. It is stated that in the Departmental Promotion Committee (DPC) for the years 2015-2016, the applicant's name was considered and was included in the panel dated 18.08.2015 (Annexure A-6) for promotion to the post of chargeman. On publication of the panel, the applicant submitted a representation dated 05.09.2015 (Annexure A-7) to the respondent

No.3 for his retention on promotion post at Mumbai on personal ground of his illness namely acute backache and medical advise and for education of his children. However, the same was not considered and by the impugned order dated 11.09.2015 (Annexure A-1), applicant is transferred on promotion. The applicant has no grievance regarding his promotion, which is quite natural. However, he is not prepared to leave Mumbai and desires to continue there itself on promotion post on the ground that his seniors were retained, which is against the policy.

4. It is stated that although the promotion-cum-transfer order is issued, the applicant is not relieved, he submitted successive representations dated 14.09.2015 (Annexure A-8), 19.09.2015 (Annexure A-9), 17.11.2015 (Annexure A-10) to respondent No.2 and finally on 21.12.2015 (Annexure A-12) to the Chief of Naval Staff IHQ, Ministry of Defence (Navy) raising the same ground of violation of the Transfer Policy. He has also grievance regarding staff minutes sheet dated 23.11.2016 (Annexure A-2) and 12.10.2016

(Annexure A-3) since in the subsequent years 2016-2017 when fresh panel for promotion of High Skilled Grade I / Masters Craftsman was prepared, his name is not included. It is alleged that applicant was pressurized to forgo his promotion in case he desires to continue at Mumbai. However, he did not concede to it.

5. The reliefs sought are based on the following grounds as mentioned in paragraph No.5 of the OA. The same are reproduced here for ready reference :-

“5.a) That the promotion cum transfer order dated 11.09.2015 is illegal and bad in law.

b) That the promotion cum transfer order dated 11.09.2015 is arbitrary and reeks of malafide;

c) That the promotion cum transfer order dated 11.09.2015 is in breach of the provisions of Para 4(b) (ii) of the transfer policy dated 02.12.2011 which mandated that the senior be retained, which is contrary to the instance at hand.

d) That in the absence of clear policy that provides for comparing two compassionate cases, allows malafides and illegalities to prevail, as is apparent in the present case.

e) That the respondent No.4 was allowed to be promoted and retained in the same Station on the ground of his being a single parent, which is a patently incorrect fact, borne out of the records available with the Respondents, particularly since he has remarried.

f) That without having closed the file of the Applicant and having communicated the same to him in writing, to thereafter issue order dated 23.11.2016, is patently illegal, bad in law and arbitrary.

g) That to withhold the Applicant from being considered in the DPC of 2015-16 is patently illegal and bad in law, particularly so in the present facts of this case.

h) That to withhold the Applicant from being considered in the DPC of 2015-16 is patently illegal and bad in law, particularly when closing his file, has not been communicated to him, which would have allowed him further recourse of refusing promotion, challenging the same etc.

i) That even if the applicant was to lose out on a promotion due to compassionate grounds, the same cannot debar him from being considered for subsequent DPCs.

j) That the juniors of the Applicant have been promoted even in subsequent panels and no provision for the Applicant has been made, and denying him promotion in backdate will unlawfully jeopardise his seniority within the department.

k) That the Respondents have allowed similarly placed MCM to be promoted and retained.

l) That denial of promotion and retaining in Mumbai would be illegal and arbitrary on the part of the Respondents.

m) That the denial of promotion and retaining by the Respondents amounts to violating equal treatment of similarly placed workers."

6. In the OA, the applicant also seeks the following interim relief as mentioned in paragraph No.9 :-

“9.a) That this Hon'ble Tribunal be pleased to Stay promotion cum transfer order dated 11.09.2015 as far as it instructs the transfer of the Applicant to NSRY (KAR) Annexure-A1.

b) That this Hon'ble Tribunal be pleased to Stay Staff Minute Sheet dated 23rd November 2016 at Annexure-A2.

c) That this Hon'ble Tribunal be pleased to Stay Staff Minute Sheet dated 12th October, 2016 at Annexure-A3.”

7. This Tribunal while admitting the OA and issuing notice to the official respondents and private respondent No.4, who is stated to be senior to the applicant in the grade, but is not transferred on promotion, no ad-interim relief was granted. The respondents were directed to file short reply to the OA covering prayer for grant of interim relief. However, thereafter, with the consent of both the learned Advocates for the parties, the matter was listed for final hearing, according to applicant, since he was not yet relieved from the present post. Hence, prayer for interim relief was not considered and matter was posted for final hearing on merit.

8. The respondents by a common reply dated 08.03.2017 resisted the OA in which all the adverse averments, contentions and grounds

raised therein are denied. The office order / communication referred by the applicant in the OA are, however, not disputed. It is specifically denied that the impugned transfer order on promotion has resulted in violation of the transfer policy as alleged by the applicant. According to the respondents, the transfer has been effected in compliance of the Transfer Policy and hence, the same is not liable to be quashed.

9. It is stated that vacancy in DPC panel for the year 2015-2016 available in Rigger trade at NSRY (Karwar), the junior most person from Rigger Trade i.e. respondent No.4 was liable to be transferred there. However, in July, 2015, the Head of the Department forwarded the representation of the respondent No.4 for retention at Mumbai on compassionate ground, he being a single parent to take care of his child, since he lost his wife. This was favourably considered and hence, respondent No.4 was retained at Mumbai on promotion. The applicant being the next junior to him, he was transferred to Karwar since personal grounds raised by him were not sufficient to retain him

on compassionate ground at Mumbai on promotion. The decision taken cannot be said to be illegal, arbitrary or improper in any manner whatsoever. The impugned order has been issued by the Competent Authority strictly in accordance with rules and same cannot be faulted. Since the applicant has not challenged validity of any provision of the Transfer Policy and since the respondents have issued the impugned order in accordance with the said policy, no relief can be granted to him.

10. It is also stated that the impugned transfer order is dated 11.09.2015 and the present OA is filed on 10.01.2017 i.e. beyond the period of one year. As such, the OA is barred by limitation as provided under Section 21 of the Administrative Tribunals Act, 1985, especially when delay in approaching this Tribunal after one year i.e. from 11.09.2015 to 10.01.2017 has not been explained by the applicant either in the OA or by filing a separate Miscellaneous Application. Hence, the OA is liable to be dismissed on this preliminary ground.

11. All the grounds raised by the applicant are also denied as not sustainable since the applicant was already promoted in DPC panel of 2015-2016 and since he did not forgo the said promotion, there is no question of considering him by DPC in subsequent year of 2016-2017. Although the applicant is relieved and as such, he is bound by the impugned transfer order. The OA is, therefore, liable to be dismissed.

12. The applicant then filed rejoinder on 20.03.2017 in which all the adverse averments made in the reply are denied and the grounds alleged by him in the OA for challenging the impugned transfer order are reiterated. According to him, there is clear violation of the provisions of paragraph No.4(a)(iv) of the Transfer Policy and hence, the impugned order is liable to be set aside, so far as, retention of the private respondent No.4 on compassionate ground is concerned, since none of his children were below twelve years of age at the time of death of their mother. It is also stated that the enquiry revealed that respondent No.4 remarried and hence, retention on compassionate ground does not sustain. According to the

applicant, the respondent No.4 should have been transferred on promotion and the applicant should have been retained on compassionate grounds alleged by him and since his two seniors were retained at Mumbai on promotion. On the contrary, the respondent No.4, who is junior was retained on compassionate ground, which is in violation of the Transfer Policy. The impugned transfer order is, therefore, hit by the provisions of paragraph No.4 (b) (i) of the Transfer Policy.

13. It is denied that OA is barred by limitation since there is no response from the respondents on successive representations submitted by him for cancellation of the impugned order of transfer. According to him, first representation submitted by him to the impugned order of transfer is 14.09.2015 and as such, cause of action arose to approach this Tribunal on 14.03.2016 (after 1½ year since the said representation is not responded), in view of the provisions of Section 21(b) of the Administrative Tribunals Act, 1985. The OA having been filed on 09.01.2017, it is within limitation.

14. The respondents then filed sur-rejoinder / Additional reply on 06.06.2017 by which all the adverse averments made in the rejoinder are denied and the stand taken in the reply is reiterated. It is stated that there is no violation of any provision of Transfer Policy so as to set aside the impugned transfer order of the applicant on promotion and / or to retain him at Mumbai on promotion post. It is also stated that the applicant has not forgone the promotion and hence, there was no question to consider him for promotion in the next year i.e. 2016-2017. The applicant and few officers were relieved out, he faced to join at the new place of his posting. Hence, the cause of action to approach this Tribunal accrued on the date of issuance of the impugned transfer order. The OA having been filed after two years there from, it is liable to be dismissed as barred by limitation.

15. The applicant again filed reply to the sur-rejoinder on 14.11.2017 denying the contentions made in the sur-rejoinder and reiterated the grounds stated in the OA in support of his claim.

16. On 02.01.2018, when the matter was called out for final hearing, we have heard Shri Sangram Chinnappa instructed by Shri L.C.Kranti, learned Advocate for the applicant and the reply arguments of Shri A.M.Sethna, learned Advocate for the respondents.

17. We have carefully gone through the entire pleadings of the parties and the documents filed by the applicant in support of his contentions.

FINDINGS

18. The only controversy involved for resolution of this Tribunal is whether the impugned order of transfer is liable to be set aside as the same is illegal, improper or incorrect, by exercising the power of judicial review vested in this Tribunal on the grounds raised by the applicant.

19. Before proceeding to consider the applicant's case on merit in which he has raised only three grounds namely alleged violation of the provisions of paragraph No.4(1) (b) and paragraph No.4(a) (iv) of the Transfer Policy and the personal grounds of his ill health and children's education, we would

like to consider first the objection raised by the respondents regarding to approach this Tribunal.

20. It is needless to say that so far as this aspect of the case is concerned, it is governed by Section 21 of the Administrative Tribunals Act, 1985, which provides a period of one year to approach this Tribunal when the cause of action first accrued. In the present case, it is true that the impugned order of transfer dated 11.09.2015 is the first in time to give rise to cause of action to the applicant to approach this Tribunal. By the said order, the applicant is transferred on promotion, as stated earlier and as such, it is not the order of transfer simplicitor. It is needless to say that as per the Transfer Policy, the applicant was otherwise due for transfer since he was working at present station under respondent No.3 is serving at Mumbai since the year 1988 i.e. for more than 27 years. It is, thus, obvious that it is first transfer out of Mumbai although on promotion post. The impugned transfer order at the bottom amongst few other conditions

prescribe the following conditions also :-

“3. The promotion of the individual will take effect from the date he assumes duty in the higher grade. The promotion is not be given effect during the currency of any penalty imposed or disciplinary action pending / contemplated against the individuals. Further, the promotion of the individuals is subject to outcome of court cases, if any.

4. The Commanding Officer / Manager are requested to inform the above position to the individuals promoted and forward their assumption report to the SMPRP Dept., Naval Dockyard, Mumbai and for outside units to their respective departments for publishing DCE Order subject to no disciplinary action is contemplated / pending.”

21. It is obvious from record that the respondents have published a panel for promotion post of Chargeman vide Dockyard Notice No.17/2015 dated 18.08.2015 (Annexure A-6) on recommendations of the DPC for the years 2015-2016, in which the applicant also figures. Immediately, thereafter, the applicant submitted a representation dated 05.09.2015 (Annexure A-7) for continuing him on promotion post to Mumbai itself i.e. without disturbing him from present station, raising some personal grounds. However, by the impugned order dated 11.09.2015 (Annexure A-1), the applicant has been transferred to Karwar, meaning thereby his request for retention was

not considered.

22. This led the applicant to submit another representation dated 14.09.2015 (Annexure A-8) i.e. after issuance of the impugned transfer order for cancellation thereof and his retention to Mumbai on promotion post. This was followed by the reminder dated 19.09.2015 (Annexure A-9). A request for personal hearing was also made vide Annexure A-10 dated 17.11.2015. However, it is also obvious from record that although the representations were not specifically replied by the respondent No.3, by the office order dated 15.12.2015 (Annexure A-11), the applicant and six other similarly placed persons, who submitted such representations for retention were considered, however, not favourably conceded and it was directed that they be unilaterally relieved from the present duties with effect from 21.12.2015, for assumption of higher duties under the power of Cadre Controlling Authority and they were advised to report to their respective units by 21.12.2015. It is also warned that in case this order is not followed, it will be treated as

disobedience of the orders of the Competent Authority and individual defaulter shall be treated as absent from duty and they will also be liable for disciplinary action. It is needless to say that copy of this order was served on the applicant. This being so, it is obvious that in pursuance of the impugned transfer order, the applicant is also relieved with effect from 21.12.2015 by the aforesaid order dated 15.12.2015. We, therefore, do not find any force in the contentions of the learned Advocate for the applicant that his representations for retention were not considered and the same are deemed to have been rejected in the light of the relieving order dated 15.12.2015, nor that he is yet to be relieved.

23. From the above discussion, it is obvious that the cause of action for the applicant to approach this Tribunal against the impugned order had arisen firstly on 11.09.2015 and thereafter, on 15.12.2015 when he was relieved from the present post. As such, he should have approached this Tribunal within a period of one year latest from the

date of relieving order i.e. 15.12.2015 as required under Section 21 of the Administrative Tribunals Act. However, he failed to do so and filed the present on 10.01.2017 after making further representations, which will not extend the period of limitation. The further representations relate to non inclusion of his name in the panel of promotion for the subsequent years 2016-2017, which gives rise to distinct case of action. This being so, it is obvious from record that even after relieving the applicant, he did not obey the said order nor joined at the new destination. As such, it cannot be said that the period of 1½ year as per the provisions of Section 20(2) (b) read with Section 21(1) (b) of the Administrative Tribunals Act, 1985 from the date of submission of subsequent representations dated 02.08.2016 (Annexure A-8) and 26.10.2016 (Annexure A-19) by which he submitted that he is not willing to forgo the promotion and he should be retained at Mumbai from promotion post since his juniors were so retained, is available to the applicant.

24. It is obvious from record that in the

OA, the applicant simply stated that he declares that the impugned order and correspondence dated 11.09.2015 and 23.11.2016 respectively are challenged and hence, the application is within limitation. It is astonishing that in spite of taking specific objection by the respondents in their reply regarding limitation, the applicant did not bother to file MA for condonation of delay. In view of above, it is obvious that the OA is barred by limitation since not filed within a period of one year from the 15.12.2015, the date of relieving order and hence, it is liable to be dismissed on this ground.

25. Lastly on the point of limitation, it may be stated that according to the applicant, cause of action to approach this Tribunal arose after 1½ year from submission of first representation dated 14.09.2015 and thereafter, the OA is filed within one year and hence, the same is within limitation. However, as stated earlier, combine reading of the provisions of Section 20(2)(b) and 21(b)(ii) of the Administrative Tribunals Act, 1985 clearly reveal that after submitting a representation,

six months breathing period is available to the respondents to consider the representations and to respond it and if not so done then period of twelve months more from expiry period of six months is available to approach this Tribunal. Thus, total period of 1½ year only is prescribed to approach this Tribunal from the date of submission of the representation against for redressal of grievance, which if not considered and responded by the respondents. Thus, the submission of the applicant is contrary to the express provision of law on limitation as stated above.

26. The record further shows that the respondents have considered the representation. However, did not concede and hence, relieving order dated 15.02.2015 is issued and applicant stands relieved with effect from 21.12.2015. As such, period of one year to approach this Tribunal is available to applicant from this date, if not from 15.12.2015 as stated in preceding para. In any case, the OA is not filed within prescribed period of one year from the date of issuance of impugned transfer order or relieving order or within a period of 1½ year

from the date of submission of first representation for cancellation of the impugned transfer order. Hence, on both counts, the OA is barred by limitation.

27. Assuming for a moment that the OA is not hit by limitation still on merit also, the applicant is not entitled to get any relief. This is so because the main thrust of the applicant is on the provisions of paragraph No.4 (b) (i) regarding promotion-cum-transfer and according to him seniors should be considered first for transfer out of the present station and he being junior, he should have been retained. However, all the three seniors above him including the respondent No.3 have been retained. For the sake of convenience and ready reference, the said provision of Rule 4 (b) (i) reads as under :-

*“4(b). **Promotion-cum-transfer** – The Personnel empanelled by DPC are against clear vacancies (existing at the beginning Apr of the year) as well as those subsequently anticipated, superannuation and those due to “Chain of Promotion”.*

(i) Personnel empanelled will be promoted as per seniority first against “clear vacancies” in the same unit followed by “clear vacancies” in same station. Thereafter, outstation clear vacancies will be filled up. In case an individual refuses promotion on transfer

either to outstation or in same station, he will be debarred for one year. In exceptional cases, the refusal for promotion may not be accepted and the individual would be transferred on promotion to the new unit.”

28. It is, thus, obvious from the plain reading of the aforesaid provision that promotions are to be effected as per seniority against clear vacancies in the same unit followed by the clear vacancies in the same station. As per the impugned transfer order, the Master Craftsman in Rigger Trade mentioned at Serial Nos.65 to 68, which are promoted are mentioned herein below :-

Sl. No.	Name / Grade / Trade / T.No.	C.No / Unit	Remarks
65	Shri CS Singh MC/MAN RIGGER P.NO.58996E	17 DDHP	<i>Promoted and Retained in existing vacancy</i>
66	Shri BB Shetty MC/MAN RIGGER P.No.59202W	17 DDHP	<i>Promoted and Retained in existing vacancy</i>
67	Shri RG Rane MC/MAN RIGGER P.No.59198B (Applicant)	17 DDHP	<i>Promoted and Transferred to NSRY (KAR) in existing vacancy</i>
68	Shri NM Bhoir MC/MAN RIGGER P.No.59190N (Respondent No.4)	16 DDHP	<i>Promoted and Transferred to C.No.92/MCM in existing vacancy</i>

29. It is, thus, obvious that Shri C.S.Singh and Shri B.B.Shetty being seniors to

the applicant in the same grade were first promoted and were retained in the same station in existing vacancies. The applicant third in seniority was, however, transferred to Karwar in existing vacancy as stated earlier. It is stated that applicant being senior to the respondent No.4, according to him, considering the grounds raised by him for retention, he should have been retained at Mumbai and the respondent No.4 should have been transferred. However, from careful reading of the aforesaid provisions of the Transfer Policy, it nowhere reveals that when transfer is effected on promotion, the seniors should be transferred first to outstations and not the juniors. On the contrary, the seniors have been given preference for retention at the same station since firstly seniors are to be accommodated in the existing vacancies in the unit and station thereafter and obviously the claim of juniors shall be considered later. The applicant has totally taken a contrary stand in the OA and misinterpreted the aforesaid provisions, which nowhere speaks that seniors should be transferred first out of unit or station and

juniors to be retained as far as possible.

30. In such circumstances of the case, we find no force in the contentions of the learned Advocate for the applicant that he being junior to Shri C.S.Singh and Shri B.B.Shetty should have been retained and his junior the respondent No.4 should have been transferred. Since Shri C.S.Singh and Shri B.B.Shetty have not been impleaded as party respondents in this OA, it is obvious that applicant has virtually no grievance regarding their retention on promotion although it is stated that they should have been transferred first on promotion. As such, it is not necessary to make further comments on this aspect of the case, nor it can be said that the respondents indulged in discriminating the applicant in the matter of his transfer on promotion and he should have been retained at present station. As such, it cannot be said that there is violation of provisions of Rule 4(b)(i) of Transfer Policy as alleged by the applicant.

31. Now turning to the grievance of the applicant regarding retention of the respondent No.4 to his exclusion, the following provisions

of paragraph No.4(a)(iv) of the Transfer Policy (Annexure A-4) are relied upon. The entire text of Rule 4(a)(iv) is reproduced here for ready reference :-

“4. Guidelines for Finalizing Transfer – The following guidelines are to be implemented :-

(a) Compassionate Transfer – Requests for compassionate transfers are admissible for following :-

(i) Where the supervisor seeking transfer to a station on compassionate grounds of medical treatment for self, parents, wife or children, suffering from fatal disease like Cancer, where specialist treatment is required but is not available in the present station.

(ii) Where the applicant is a widow and does not have anybody to look after her at the station where she is presently serving.

(iii) Where the applicant is physically handicapped person and does not have anybody to look after him / her at the station where he / she is serving.

(iv) Where the applicant's wife has expired leaving behind one or more small child / children (of less than 12 years) and nobody is available to look after the children.”

32. It is obvious from perusal of the aforesaid provisions that whereas cause No.(i) to (iii) refer to transfer to other station on compassionate ground, whereas Clause (iv) thereof refers to retention at a particular station. According to the applicant, request of the respondent No.4 for retention on compassionate ground namely death of his wife

and nonavailability of any member to look after his children is illegally considered and approved by the respondents and hence, his retention is liable to be set aside and in his place the applicant should be retained by canceling the impugned transfer order.

33. In this respect, it is not disputed that the respondent No.4 has lost his wife and that he has children to look after. However, according to the applicant, his parents were looking after his children and hence, his case does not fall under Rule 4(a)(iv). He also disputed that the children of respondent No.4 are less than 14 years of age. In this respect, the respondents have taken a rational decision to retain the respondent No.4 at present station and as such, we are of the considered view that there is hardly any scope for interference by this Tribunal. It is also obvious from record that the request of the applicant was also considered by the respondents. However, the grounds raised by him namely his illness of severe backache and education of children, who are not stated to be appearing for X or XII Standard Examinations

did not find favour with the respondents. As such, compassionate grounds raised by the private respondent No.4 were found to be more genuine and convincing and hence, approved by the respondents. It, therefore, cannot be said that there is hardly any scope for interference with the impugned order of transfer and retention of respondent No.4 at Mumbai.

34. It is obvious from record that the applicant does not want to forgo the promotion and at the same time desires that he should be retained at Mumbai. It is true that the record further shows that he was called upon to forgo the promotion in case he does not want to join at the new destination. However, he did not take any steps in this behalf and on the contrary, specifically stated in his representation that he does not want to forgo the promotion and to retain him on promotion post at Mumbai. It is, thus, obvious that the applicant wants to blow both hot and cold in the same breath. In fact, the applicant is put to great financial loss since he has not joined promotion post for more than two years. Had he forgone the promotion for a period of one year

immediately after issuance of the transfer order, in that event, he would have been retained at Mumbai and would have been considered for promotion next year. However, it is obvious that he did not adopt this way and received less salary although promoted and is relieved with effect from 21.12.2015 but failed to join at the new destination on promotion post. The consequences as stated in the relieving order dated 15.12.2015 shall follow and the respondents will be at liberty to take appropriate steps / action against the applicant in this behalf.

35. During the course of arguments, the learned Advocate for the applicant submitted that nobody has been transferred on promotion in Rigger trade vice applicant and there are vacancies in the promotion cadre at Mumbai in which the applicant can be easily accommodated. In this respect, we are of the considered view that it is the exclusive discretion of the respondents to consider this aspect and since the applicant has been transferred in the vacant post at Karwar, there is no need to consider this aspect of the case and on that

count alone, the impugned order cannot be quashed.

36. Before concluding, we may mention that the law on the transfer of Government servant is well settled through catena of decisions rendered by Hon'ble Supreme Court. The power of judicial review vested in this Tribunal to interfere with the order of transfer issued by the Competent Authority is, thus, settled. To mention a few, in ***Somesh Tiwari Vs. Union of India and others, (2009) 2 SCC 592, Civil Appeal No.7308 of 2008 decided on 16.12.2008*** by the Hon'ble Supreme Court, the said principle is elaborately stated in paragraph No.16, which is reproduced here for ready reference :-

*“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where *inter alia mala fide* on the part of the authority is proved. *Mala fide* is of two kinds – one *malice in fact* and the second *malice in law* as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”*

37. Yet in another case of ***S. Ramasamy Vs. The Director of Town Panchayats Office of the Directorate Chennai & Others, Writ Petition No.31431 of 2015 decided on 05.07.2016, by the Hon'ble High Court of Madras***, in paragraph No.15, it has been held as under :-

“15. In normal circumstances, this Court, in exercise of powers conferred under Article 226 of The Constitution of India, will not ordinarily interfere with an order of transfer passed by the employer. It is well settled that an order of transfer is part and parcel of a service or it is an incident of service. However, in the present case, in the counter affidavit of the first respondent, certain averments have been made against the petitioner which would go to show that the impugned order of transfer has not been passed on administrative exigency, rather, it was passed as a measure of punishment against the petitioner or in lieu of punishment. Further, the impugned order has been passed during the middle of the academic year and on that ground also, it is liable to be set aside.”

38. In the present case, the applicant although alleged *mala fide*, the particulars are not given. As such, it cannot be said that the impugned order is vitiated or suffers from malice. This is so because the allegations of malice / *mala fide* are required to be specifically alleged and proved.

39. Further in ***State of U.P. and others Vs. Gobardhan Lal, 2005 Supreme Court Cases (L&S) 55, Civil Appeal No.408 of 2004 decided on 23.03.2004***, in which the scope, extent and power of judicial review vested in this

Tribunal to interfere with the order of transfer of Government servant is elaborately considered. It has been held that :-

“transferring a Government servant is the prerogative of Authorities concerned and Courts should not normally interfere therewith, except when transfer order is shown to be suffered from malice or is vitiated by mala fide or in violation of any statutory provisions or having been passed by the authority not competent to do so. it is also held that the allegation of mala fide must be based on concrete material and must inspire confidence of the Court.”

40. In the aforesaid case, it has been further observed in paragraph No.7 as under :-

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

with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

41. Further, the case of ***Mohd. Masood Ahmed Vs. State of UP and others in Civil Appeal No.4360 of 2007 decided on 18.09.2007*** decided by the Hon'ble Supreme Court is relevant to mention here. In that case, the Petitioner has challenged the order issued by State Government. It was held that transfer is an exigency of service and is an administrative decision and as such interference by the Courts with transfer orders should only be in very rare cases. Several decisions rendered by the Hon'ble Supreme Court in this behalf are also relied upon. The observations recorded by the Hon'ble Supreme Court in ***State of Punjab Vs. Joginder Singh Dhatt, AIR 1993 SC 2486*** are also referred with approval. The same reads as under :-

“We have heard learned counsel for the parties.

This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a

matter where, on the face of it, no injustice was caused."

42. We have also come across the decision rendered by the Hon'ble Bombay High Court in the case of ***V.B.Gadekar, Deputy Engineer Vs. Maharashtra Housing and Area Development Authority, 2007 (6) BomCR 579, decided on 23.08.2007.*** In that case, the following observations noted in paragraph No.7 are worth quoting. The same are reproduced here for ready reference :-

"7. Ordinarily, order of transfer are made in the exercise of administrative authority to meet the exigencies of service and in public interest. How the administration has to run its affairs is not a matter which squarely falls in the judicial domain. Unless the acts of transfer were in conflict with Rules and were made for ulterior motives or in patent arbitrary exercise of powers, the court would decline to interfere in such matter. The transfers could be in exigencies of service or due to administrative reasons. The petitioners in the present case have failed to demonstrate as to how the order of transfer has been passed for collateral purposes or extent arbitrary exercise of power.

43. It is also observed that :-

The discretion is vested in the authorities to make an exception of tenure of two and three years wherever special circumstances exist. Special circumstances should be understood in the concept of service jurisprudence and not in its literal sense. Conditions of service make transfer as a necessary incidence of service. The Rules give protection to an employee to stay at the place of posting for three years but this is subject to the exception that, where in the wisdom of the authority concerned he should, for administrative and exceptional circumstances, even be transferred during that period. We do not see any fault in exercise of such power. In the present case, from the record before us,

there are no patent mala fides or arbitrariness in exercise of power by the respondents. The conduct of the Petitioners is to be looked into by the authorities and it will neither be just nor fair for the Court to interfere at this stage and hold that the orders of transfer are vitiated on account of mala fide or colourable exercise of power that they in violation of the Rule."

44. From the above discussion, it is obvious that scope to interfere with the transfer order of Government employee is limited and the same is possible only if it is shown that the transfer order has been issued in violation of any express provision of the Transfer Policy / guidelines or that it suffers from malice / *mala fide* or is the result of arbitrary exercise of power or has been issued by an authority, which is not competent to do so. In the present case, none of the aforesaid grounds are ever alleged or proved by the applicant. In such circumstances of the case, it is neither possible nor justified to interfere with the impugned transfer order.

45. In view of the above, we do not find any merit in the present OA and as such, no relief can be granted to the applicant. There is no scope for exercise of the power of

judicial review vested in this Tribunal for quashing the impugned transfer order of the applicant and the retention order of the private respondent No.4, although he did not appear in the OA nor has filed any reply. His case was, however, fully supported by the respondents, who justified his retention on compassionate ground.

46. In the result, the OA stands dismissed as devoid of any substance.

47. However, in the fact and circumstances of the case, the parties are directed to bear their respective costs of this OA.

48. Registry is directed to forward certified copy of this order to both the parties at the earliest.

(R. Vijaykumar)
Member (Administrative)

(Arvind J. Rohee)
Member (Judicial)

*kmg**