

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION No.346 OF 2017

Dated this Thursday, the 04th day of January, 2018

**CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)**

Mahasen Sambhajirao Gandle
Chief Administrative Officer,
Bhabha Atomic Research Centre,
Homi Bhabha National Institute,
Anushakinagar, Mumbai
(R/o A-15, Kedarnath,
Anushaktinagar,
Mumbai 400 094. **.. Applicant.**

(In person)

Versus

1. Union of India, through :
Secretary,
Department of Atomic Energy,
& Chairman,
Council of Management,
Homi Bhabha National Institute,
CSM Marg, Mumbai 400 001.
2. Director,
Bhabha Atomic Research Centre,
Central Complex, Trombay,
Mumbai - 400 001.
3. Registrar,
Homi Bhabha National Institute,
Training School Complex,
Anushaktinagar,
Mumbai 400 094. **..Respondents.**

**(By Advocate Shri Abhay Kini for M/S
M.V. Kini and Associates)**

OA filed on 29.05.2017

Order reserved on 19.12.2017

Order delivered on 04.01.2018

O R D E R

PER : SHRI ARVIND J. ROHEE, MEMBER (JUDICIAL)

The applicant, who is presently working as Chief Administrative Officer in Homi Bhabha National Institute (for short '**HBNI**') under respondent No.2 has grievance regarding the impugned order dated 25.05.2017 (Exhibit A-1) issued by the respondent No.1 by which he is transferred from the present post in the same capacity to Public Awareness Division, Department of Atomic Energy (for short '**DAE**'), Secretariat Mumbai along with the said post. He, therefore, approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a). To allow the Original Application.

(b). To declare the impugned transfer order as arbitrary, mala fide and illegal.

(c). To order for cancellation of impugned transfer order.

(d). To award the cost of Original Application.

(e). To grant any other consequential benefits that Hon'ble CAT may deem fit."

2. The facts of the case in short, which are necessary to mention for resolution of the controversy involved may be stated as under :-

The applicant belongs to Scheduled Caste and is Post Graduate in Sociology and has also completed MBA in Human Resource Management. He joined DAE in the year 1980 on the roll of Heavy Water Board Projects (for short '**HWBP**') Central Office, Mumbai as Lower Division Clerk. He secured promotion as Upper Division Clerk in the year 1984 and thereafter Senior Accounts Clerk in 1989 after qualifying the Departmental Competitive Examination. The applicant secured further promotion as Assistant in May, 1990 and was posted to work in

DAE Secretariat, Mumbai. He was, thereafter, transferred to Atomic Energy Regulatory Board (for short '**AERB**'), Mumbai in the same capacity in July, 1991.

3. The applicant further qualified the Departmental Competitive Examination for the post of Assistant Personnel Officer (APO) Group 'B' Gazetted in the scale of Rs.6,550-10,500/- in the year 1992 and was posted to work in Directorate of Construction Services and Estate Management (for short '**DCSEM**') Mumbai.

4. It is stated that few caste biased persons in the Department developed jealousy about the applicants achievements, since he became APO as topper. He was, therefore, subjected to harassment, with a view to tarnish his image. Within three months, the applicant was transferred from DCSEM to Bhabha Atomic Research Centre

(for short '**BARC**') Mumbai without assigning any reason. It is stated that applicant was subsequently transferred and posted in different sections of BARC on as many as five occasions within a span of just three years.

5. It is stated that since the applicant was fed up with the activities of caste biased persons, he applied for transfer to Atomic Minerals Division (for short '**AMD**') Nagpur, which request was favourably considered and he joined there in the same capacity of APO in June, 1996.

6. It is stated that after rendering valuable service for five years at AMD Nagpur, the applicant was again transferred to DCSEM, Nagpur in June 2000 in the same capacity.

7. The applicant became eligible for further promotion to the grade of Administrative Officer

I/Deputy Establishment Officer in the pay of Rs.10,000-15,400/- (pre revised). Although he faced the interview, he was not included in the select panel. Same thing happened in the subsequent years of 2002.

8. The applicant then approached the National Commission for Scheduled Castes, New Delhi, for redressal of his grievance, which advised the respondent No.1 to review the claims of Scheduled Caste/Scheduled Tribes candidates against the reserved posts. In pursuance, thereof, the respondent No.1 reviewed the cases of eligible SC/ST candidates and empanelled 6 candidates including the applicant at the bottom of the seniority list for the post of Administrative Officer (AO)-I/Deputy Establishment Officer (DEO).

9. It is stated that the applicant was further promoted to

the post of Administrative Officer (AO)-II in the pay of Rs.7,450-11,500/- in July, 2003 in Group 'B' post. He secured further promotion as Administrative Officer (AO)-I in October, 2003 in pay of Rs.10,000-15,400/- in Group 'A' and was transferred to BARC Mumbai. It is stated that the applicant's promotion for the post of Administrative Officer Group 'A' was delayed by three years for no fault of his.

10. It is stated that in the year 2009-2010, although the applicant was called for interview for the further promotion post of Chief Administrative Officer (CAO) in pay of Rs.15,600-39,100/- with Grade Pay of Rs.7,600/-, he could not be empaneled despite giving excellent performance. It is only after approaching this Tribunal, the applicant was promoted to the said post of CAO in June, 2011 and he was

transferred to BARC in the Board of Radiation & Isotope Technology (for short '**BRIT**'), Navi Mumbai. Thus, his promotion to the grade of CAO was delayed by two years.

11. The applicant then applied for request transfer to Directorate of Purchase and Stores (for short '**DPS**'), one of the constituent units of DAE located in Anushakti Nagar, Mumbai. However, instead of posting him in DPS, he was transferred to Nuclear Fuel Complex ('**NFC**'), Hyderabad, which has resulted in incalculable damage to the educational prospects of his children. His request to defer aforesaid transfer to Hyderabad on personal grounds was declined. He was, therefore, constrained to approach this Tribunal once again and this Tribunal had directed the respondent No.1 to dispose of the pending request of the applicant for cancellation of aforesaid transfer.

The same was, however, declined. The applicant, thereafter, joined at NFC Hyderabad on 06.01.2014.

12. It is stated that while working at NFC Hyderabad for a period of over two years and three months, the applicant faced tremendous amount of discrimination, exclusion, isolation and humiliation practiced by his superiors and this led him to apply for request transfer to Mumbai. This time, his request was favourably considered and he was transferred back to BARC Mumbai in May 2016 as CAO.

13. It is stated that although the applicant is borne on the rolls of BARC, he was posted to work in HBNI without his consent and without finalization of the terms and conditions of service under the aided institution namely HBNI. He was also designated as Deputy Registrar there vide office order dated 23.05.2016.

14. By the impugned order dated 25.05.2017, the applicant is again posted to Public Awareness Division, DAE Secretariat at Mumbai as CAO by temporarily transferring the said post to DAE, which is the subject matter of challenge in this OA. The applicant has also filed separate OA No.221/2017 making grievance regarding delay in granting promotion to him and also for not considering his candidature for the post of Registrar BARC, which is pending adjudication.

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

“5.1) The applicant belongs to SC category and has rendered meritorious service to the department for over 38 years. He is also due for retirement consequent upon his attaining the age of superannuation in May-2018. The applicant has just completed on year in this place and

the post of Dy. Registrar has been newly created to look after the administrative functions of the Institute.

5.2) The post of Registrar is also vacant and there is no senior level officer trained in administration to look after the Administrative functions of the Institute. Hence transferring the applicant that too along with the post is totally unjustified and unwarranted.

5.3) There is no vacant post of CAO available in the Public Awareness Division and posting of CAO in Public Awareness Division, DAE Secretariat was not at all required inasmuch as there are enough Administrative functionaries to take care of administration in DAE secretariat and hence the transfer of applicant is not at all justified. But respondents have acted with an ulterior motive. The applicant hails from SC category and therefore is targeted for harassment from time to time.

5.4) The Government of India, Department of Personnel & Training OM No.36026/3/85-Estt. (SCT) dated 24-6-1985 and OM No.36011/25/89-11 Estt. (SCT) dated 21-8-1989 have provided the safeguards and issued instructions to protect the interests of SC/ST employees but respondents have been ignoring these instructions on and often and indulging in harassing the applicant.

5.5) The applicant is quite senior amongst all CAOs in the department and his seniority No.is 3 as per the existing seniority list. If at all CAO is required to be posted in DAE Secretariat, then any other CAO junior to him who is stagnating at one place for longer duration than the applicant could have been posted. But instead of

taking recourse to posting of junior CAO stagnating at one place for longer duration than the applicant, Respondents have chosen the applicant as soft target which is totally unjustified.”

16. The applicant in this OA has sought the following interim reliefs :-

“9.i) To suspend the ongoing recruitment process forth with.

ii) To direct the respondent No.1 to consider the candidature of the applicant for the post of Registrar as per UGC Regulations and extant reservation orders.

17. This Tribunal while issuing notice to the respondents vide order dated 05.06.2017, the respondents were directed not to relieve the applicant till the next date of hearing from the present post of CAO HBNI. The said interim order is continued from time to time, which is still in force.

18. In pursuance of the notice issued, the respondents by a common reply dated 19.06.2017 resisted the OA in which all the adverse

averments, contentions and grounds raised therein are denied. Various promotions granted to the applicant from time to time and his posting at different stations within the constituent units of BARC are, however, not disputed.

19. The allegations made regarding delay in granting promotion to the applicant are denied and refer the decision dated 02.02.2015 in OA No.363/2011 filed by the applicant in which it has been held as under :-

“There is no arbitrariness, illegality or infirmity in the decision of DPC in not empanelling the Applicant in the grade of Senior Administrative Officer for the year 2010.”

20. It is stated that the respondents have complied with the directions issued by this Tribunal in the OA filed by the applicant against the order of his transfer from BRIT Navi Mumbai to NFC Hyderabad and the pending representation for cancellation of

the said transfer is decided, which the applicant has misread. He has not challenged the said order also and joined the NFC Hyderabad and there is no substance in this OA.

21. It is stated that the working arrangement of all posts at the level of Deputy Registrar and below in the Central Government Office of respondent No.3 is in-cadre position of BARC. Such posts are, therefore, not treated as deputation or foreign service and hence, there is no question of obtaining consent for placing such officers or placing such officers in higher pay does not arise.

22. It is stated that due steps are being taken in accordance with rules to filled up the vacant post of Registrar HBNI, which falls vacant on 31.12.2016. The respondents denied the allegations made by the applicant in OA No.221/2017 against rejection of his

candidature for the post of Registrar.

23. It is stated that the applicant was posted as Deputy Registrar, which is in-cadre post although the Disciplinary Proceeding was then pending against him. However, the post of Registrar is to be filled up by way of direct recruitment and not as promotion post and hence, it is necessary that the applicant should be clear from vigilance angle.

24. It is stated that the BARC and its constituent units including aided institution have a large work force of employees including many belonging to SC and ST category. All the employees are treated equally without any discrimination based on caste or any other consideration. It is denied that applicant was transferred by the impugned order, only on the ground that he belongs to SC category and

that he has obtained interim order from this Tribunal in OA No.221/2017 by which finalization of recruitment process is stayed.

25. All the grounds raised in the OA for challenging the impugned order of transfer are denied. It is stated that the impugned order is not faulted and hence, there is no question of exercising the power of judicial review to quash the same. The OA is, therefore, liable to be dismissed.

26. The applicant then filed rejoinder on 13.07.2017 in which all the adverse averments and contentions made in the OA are denied. The applicant has also produced on record copy of correspondence dated 06.11.2013 for cancellation of his transfer from BARC Mumbai to NFC Hyderabad and copy of the order passed by this Tribunal in OA No.721/2013 dated 05.12.2013. He has also produced

the copy of DOPT's OM dated 05.01.1994 (Annexure RA-3) on the subject "*transfer on deputation / foreign service of Central Government employees to ex-cadre post, regulation of pay, deputation (duty) allowance, tenure of deputation / foreign service and other terms and conditions - regarding*".

27. Further, copy of notification issued by the University Grants Commission (UGC) on revision of pay scales, minimum qualification for appointment of teachers in University and Colleges and other measures for the maintenance of standards, 1998 is also filed, which also prescribes relaxation of 5% marks obtained at Masters level for the SC / ST candidates. Extract from the decision rendered by the CAT declaring that Government employees near retirement should not be disturbed is also produced on record. Further, copy of DOPT's OM dated 24.06.1985 on the subject

harassment of and discrimination against SC and ST employees in Central Government is also produced on record in support of his contentions that he was harassed / discriminated for his caste.

28. On 19.12.2017, when the matter was called out for final hearing, heard the applicant, who appeared in person and the reply arguments of Shri Abhay Kini, learned Advocate for the Respondents.

29. We have carefully gone through the entire pleadings of the parties and various documents relied upon by them in support of their rival contentions.

30. We have also given our thoughtful considerations to the submissions advanced before us by both the parties.

FINDINGS

31. The only controversy involved for resolution of this

Tribunal in the present OA is whether the impugned order dated 25.05.2017 issued by the respondent No.1 regarding his transfer from the post of CAO, BARC / HBNI Mumbai in the same capacity to the Public Awareness Division, DAE Secretariat Mumbai with temporary transfer of the said post is any manner illegal, improper or incorrect and hence liable to be set aside, by exercising the power of judicial review vested in this Tribunal.

32. The factual matrix given by the applicant in the OA right from his initial entry in DAE till his promotion to the post of Chief Administrative Officer / Deputy Registrar and his posting in the said capacity in HBNI are not disputed. The record further shows that the applicant was subjected to transfer from one constituent unit of DAE to the other on number of occasions, although he

unsuccessfully challenged one such transfer from BARC Mumbai to NFC Hyderabad, and thereafter, he obeyed the said order by joining at NFC Hyderabad.

33. In this OA, the applicant has elaborately stated his grievance regarding rejection of his candidature for the post of Registrar, although according to him, he is eligible and is the only competent person for the said post on the strength of longstanding experience gained by him in the field, for which separate OA No.221/2017 is filed. As such, this aspect of the case will be elaborately dealt with and considered in the said OA. In this OA, the grievance is regarding transfer only from one constituent unit of DAE / HBNI to DAE Secretariat in Mumbai itself, in its Public Awareness Division there.

34. The impugned transfer order

specifically states that the applicant, who is in the grade of CAO in level 12 in the pay matrix was transferred by the Cadre Controlling Authority with immediate effect. It is also obvious that the applicant has been shifted from HBNI to Public Awareness Division in DAE Secretariat, Mumbai itself, without change of station. It appears that in the Public Awareness Division, there is no sanctioned post of CAO to look after the work and hence, one post of CAO from HBNI is also temporarily transferred to DAE Secretariat, Mumbai, which is permissible as per extant rules. It is obvious that this was done solely with a view to ensure that there will be no administrative difficulties for the applicant to release his salary while working on the said post.

35. During the course of arguments, the applicant submitted

that he has been deliberately and indiscriminately shifted from HBNI to DAE Secretariat, since he has challenged the recruitment process for the post of Registrar and obtained ad-interim stay to it. So far as this aspect of the case is concerned, the record of OA No.221/2017 shows that the said OA was filed on 30.03.2017 and vide order dated 03.04.2017, this Tribunal directed the respondents not to finalize the selection process. As such, there is no blanket stay to recruitment process and respondents are restrained to finalize it by publishing select panel. Till that stage, it is open for them to take appropriate steps as per rules. It is true that the impugned transfer order has been issued thereafter on 25.05.2017 and hence according to the applicant, it is punitive in nature, since the respondents developed a strong

prejudice and got annoyed since they were restrained from finalizing the selection process for the post of Registrar.

36. It is, thus, obvious that the applicant has been transferred after issuance of the interim order restraining the respondents from finalizing the selection process for the post of Registrar. However, from this circumstance alone, it cannot be said that the applicant has been transferred only on that ground. It is obvious that the respondent No.1 is the best judge to consider which officer will be most suitable to be posted at a particular constituent unit for its smooth functioning. Perhaps on account of work load in DAE Secretariat, it felt necessary to post one independent CAO in Public Awareness Division of DAE Secretariat, Mumbai and considering the fact that the applicant has the

longstanding experience to his credit to work in different grades in number of constituent units of DAE, he was found to be most suitable to transfer him there, by temporarily transferring one post of CAO from HBNI to DAE Secretariat, Mumbai. In such circumstance of the case, the scope of judicial review to interfere with such a decision taken by incompetent authority is very limited. We do not find any illegality, arbitrariness or impropriety in the impugned order of transfer within Mumbai city itself on this ground, without calling upon the applicant to vacate the Government accommodation in Anushakti Nagar, Mumbai presently in his occupation.

37. Further, there is no material on record to justify the applicant's contentions that he being the member of SC category, he has been discriminated or victimized

by few superiors and with a view to ensure that he does not get the highest position of Registrar in HBNI, he is shifted therefrom. Admittedly, the applicant applied for the said post and rejection of his candidature since found to be not eligible is subject matter of another OA, which has nothing to do in the present OA, except that in case the applicant succeeds in establishing his claim in the said OA and the decision regarding rejection of his candidature is set aside and he is finally found suitable and selected for the post of Registrar, in that event, he will have to be transferred again to HBNI on the said post, since admittedly there is no post of Registrar in DAE Secretariat, Mumbai.

38. During the course of arguments, the applicant submitted that he is due for retirement on superannuation in May, 2018 and had

completed only one year in the post of Deputy Registrar in HBNI before he was transferred to DAE Secretariat and hence, the impugned order is liable to be set aside. By referring to DOPT OM, he further submitted that it is the policy of Government not to disturb the Government employee who is on the verge of retirement. However, in this respect, it is obvious that the applicant has not been transferred to other station i.e. out of Bombay and has been posted to Mumbai city itself from one office to another under DAE by protecting his pay. In such circumstance of the case, we do not find any force in the above contention of the applicant, especially when there are many other Deputy Registrars / CAOs available at HBNI to cope up with the work load there.

39. Further, we do not find any force in the contentions of the

applicant that there is no senior level officers having longstanding experience in administration to look after the administrative functions of HBNI and hence, he should be continued there itself. We are also not impressed with the contention of the applicant that there is no post of CAO at Public Awareness Division in DAE Secretariat and hence, impugned order is not sustainable. As stated earlier, the respondents have taken due care since one post of CAO has been temporarily transferred to Public Awareness Division in DAE Secretariat, Mumbai. As such, there will be no difficulty for the applicant to work on the said post, so long as he is not shifted therefrom, as he is due for retirement on superannuation in May, 2018. It cannot be said that the respondents have acted with ulterior motive in issuing the impugned transfer order and that he has been

targeted and subjected to harassment.

40. We do not find any force in the contentions of the applicant that the respondents have violated the provisions of DOPTs OM dated 21.08.1989 regarding the safeguards and instructions issued to protect the interest of SC / ST employees or that those were ignored when the applicant was transferred. It cannot be said that only because the applicant belongs to SC category, he has been victimized and transferred. It is obvious that the transfer is on administrative exigency or even in public interest and hence, it will not be proper to interfere with it.

41. The applicant further submitted that the applicant is at serial No.3 in the cadre of CAO in seniority list and hence, his juniors should have been considered for transfer to Public Awareness

Division in DAE Secretariat, Mumbai.

In this respect, it can only be said that for transferring from one constituent unit of DAE to the other, the seniority is immaterial. It is to be considered as who will be the most suitable person to manage the administrative functions more efficiently at a transferred station and according to the respondent No.1, the applicant since found to be most suitable, he was transferred there.

42. It is needless to say that transfer is an incident of service and it can be successfully challenged only if it is shown that it has been issued by an incompetent authority or that it suffers from malice or that it is against any express provision of Transfer Policy/Guidelines/Statute. In the present case, the above grounds are absent, since the applicant has not challenged the authority of

respondent No.1 to issue the transfer order. Further, no specific allegations or *mala fide* are made or proved against any of the respondents in issuing the impugned transfer order. It is also nowhere alleged that the transfer order has violated any provision of the Transfer Policy / Guidelines / Statute. Hence, there is hardly any scope for interference with the impugned transfer order.

43. Before concluding, we may mention that the law on the transfer of Government employee is well settled through a 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.”

44. 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.”

45. 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.

46. 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.”

47. 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.”

48. 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.”

49. 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.

50. 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.”

51. 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.

52. In view of above, the OA stands dismissed. Consequently, the interim order dated 05.06.2017 staying the impugned order automatically stands vacated.

53. In the facts and circumstances of the case, the parties are directed to bear their respective costs of this OA.

(R. Vijaykumar)
Member (Administrative)

(Arvind J. Rohee)
Member (Judicial)

*kmg**