

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

O.A.No.210/00677/2016

Dated this Wednesday the 28th day of March, 2018.

**Coram: Hon'ble Shri Arvind J. Rohee, Member (J)
Hon'ble Shri R. Vijaykumar, Member (A).**

Shri Bharatbhushan Balaram Rajagiri,
Working as Sr.Social Security Assistant,
Under Sub-Regional Office Solapur.
Residing at- 280-A, Ekata Nagar,
Near W.I.T. College,
Solapur - 413 005. .. Applicant.

(By Advocate Shri Vicky Nagrani).

Versus

1. Employees Provident Fund
Organization, through
the Central Provident Fund
Commissioner,
Ministry of Labour and
Employment,
Government of India,
Head Office,
Bhavishya Nidhi Bhavan,
14, Bhikaji Cama Place,
New Delhi - 110 066.
2. The Regional Provident
Fund Commissioner-1,
Regional Office,
Cantonment Board Building,
Golibar Maidan,
Pune - 411 001.
3. The Office-in-Charge/
Assistant Provident Fund
Commissioner,
Sub Regional Office,
165-A, Surwase Towers,
Railway Lines,
Solapur - 413 001. .. Respondents.

(By Advocate Shri R.R. Shetty).

Order reserved on : 09.03.2018
Order delivered on : 28.03.2018.

O R D E R

Per : Arvind J. Rohee, Member (Judicial).

The applicant who is presently working as Sr.Social Security Assistant in Sub-Regional Office Solapur under Respondent No.3 has grievance regarding the impugned order dated 08.09.2016 (Annexure A-1) issued by the respondents, by which he is transferred from Solapur Sub-Regional Office to Regional Office Pune. He, therefore, approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"(a) This Hon'ble Tribunal may be graciously pleased to call for the records of the case from the Respondents and after examining the same it may be declared that the Order dated 08.09.2016 i.e. Anx."A-1", is illegal, arbitrary and unreasonable and violation of General guidelines of the transfer policy and the same may please be quashed and set aside.

(b) The Hon'ble Tribunal may be pleased to direct the Respondents not to transfer the Applicant and retaining him at Sub-Regional Officer Solapur.

(c) The Hon'ble Tribunal may be pleased to grant such other relief as this Hon'ble Tribunal feels it necessary to grant the same with costs."

2. The facts of the case in brief which are necessary for resolution of the controversy involved

in the matter may be stated as under:

The applicant joined the Regional Office, Bandra, Mumbai under Respondent No.1 way back on 16.02.1983 as Lower Division Clerk. In the year 1993 he sought request transfer from Mumbai to Solapur, the later being is home town. His request was accepted and he was transferred to Sub-Regional Office, Solapur on the same post of L.D.C. After serving at Solapur for a few years, the applicant was again transferred to Pune. After serving there for few years applicant was again transferred to Solapur on 16.01.2016. He continued there till he is again transferred to Pune by the impugned order dated 08.09.2016 while working at Solapur, it is stated that the applicant was shifted from one Section to another in Sub Regional Office viz. Inward Section, Establishment Section, legal section and pension reconciliation section etc. The applicant has politely accepted the frequent shifting from one Section to another at Solapur after he is re-transferred there on 06.01.2016.

3. The applicant was promoted to the post of Upper Division Clerk in the year 1999, after completion of 16 years of service in the feeder cadre of L.D.C. It is stated that the post of U.D.C. was redesignated as Sr. Social Security

Assistant in the year 2005.

4. By the impugned order dated 06.09.2016 the applicant was transferred from Solapur to Pune alleging administrative grounds. Prior to that he was served with a charge-sheet on 20.06.2013 relating to the period from 2008-2009 alleging dereliction in duty. The applicant contested the said inquiry and ultimately he was exonerated of the said charge vide order dated 04.05.2016 passed by Disciplinary Authority. It is stated that during the period from 06.09.2016 to 09.09.2016 the applicant was on leave on account of Ganapati Festival. However, during the leave period the respondents No.2 and 3 issued the impugned order dated 08.09.2016 thereby illegally transferring the applicant again from Solapur to Pune Regional office within just eight months period.

5. It is stated that as per the guidelines issued by the Department of Personnel & Training, transfer is done in static units after a normal tenure of three years, whereas tenure of two years is prescribed for hard areas. There was no reasons to shift the applicant to Pune Regional Office with just eight months from 08.01.2016 when he was re-transferred to Solapur. Thus the impugned transfer order resulted in violation of the provisions of

general guidelines/Transfer Policy. Thus the action on the part of the respondents is arbitrary, since it was issued while the applicant was on leave and before completion of normal tenure of three years at Solapur. In this behalf the decision rendered by Hon'ble Supreme Court in **B. Vardha Rao Vs. State of Karnataka, (1986) 4 SCC 131**, is relied upon in which it has been held that frequent unscheduled and unreasonable transfers can uproot a family cause. It also results in causing irreparable harm to Government servant and drive him to dispersion. It also results in affecting educational prospects of the children and leads to numerous other complications and problems causing hardship and demoralization. The impugned order is, therefore, liable to be set aside.

6. In the O.A. the following interim relief is also sought by the applicant:-

"(a) Pending the hearing and final disposal of this Original Application, restrain the Respondents from operating and implementing the impugned Order dated 08.09.2016 (Anx. A-1).

(b) Grant ad-interim ex-parte Order in terms of prayer 9(a) above."

7. This Tribunal while admitting the O.A. for final hearing issued notice to the respondents for

consideration of prayer for interim relief. The matter was however posted for final hearing on completion of pleadings since applicant did not insist for hearing on interim relief. Thus, there is no interim order staying the effect and operation of the impugned transfer order. However, on interrogation with the applicant and his learned Advocate on 09.03.2018 when the parties were finally heard, it is stated that the applicant did not join the new posting so far and thus failed to comply the impugned order.

8. The respondents by a common reply dated 27.02.2017 resisted the O.A. by which all the adverse averments, contentions and grounds raised therein are denied. It is stated that the impugned order is perfectly justified which calls for no interference by this Tribunal.

9. It is stated that although the applicant was transferred from Pune to Solapur in January, 2016, it was felt necessary to transfer him again to Pune on account of the fact that he got himself embroiled in committing serious irregularities in pension fund settlement cases at Sub-Regional Office Solapur. This was disclosed on receipt of complaint from one Mahamud Shaikh. It is stated that the magnitude of the alleged irregularity was such that

even the Employees Provident Fund Organization had undertaken a separate audit through a special team sent from Head Office to Sub-Regional Office, Solapur. In the light of the said complaint the applicant is transferred from Solapur to Pune for administrative reasons by the impugned order. It is also stated that all officials of the Sub-Regional Office, Solapur who were found to be involved in committing the irregularities in pension settlement cases were also transferred from Sub-Regional Office, Solapur to Regional Office, Pune vide order dated 08.09.2016 and 09.09.2016 (Annexure R-1 colly.) Thus the applicant was transferred on administrative grounds and the impugned order does not warrant any interference by this Tribunal. The O.A. is, therefore, liable to be dismissed.

10. It is also stated that keeping in view the oral and written complaints from one Shri Satyanarayan B. Lagshetti, Member, Central Advisory Committee on Beedi Workers Welfare Fund, Ministry of Labour and Employment Wages, Government of India, the then Regional Provident Fund Commissioner-II/OIC, on administrative grounds internally shifted applicant from Inward Section to Legal Section within the same office premises. However, on the applicant's request that he cannot work in

Legal Section stating ground of his illness, his representation was considered and he was shifted to Pension Reconciliation Section in the same office premises. It is denied that the applicant was frequently transferred from one Section to other. Initially on transfer from Pune to Solapur the applicant was entrusted the work in Inward Section and thereafter he was shifted to Legal Section, Administrative Section and then on his request to Pension Reconciliation Section. Thereafter on administrative ground on the strength of the complaint received, he was again transferred to Pune in the interest of administration and in office exigency.

11. It is stated that from the year 1993 till 06.02.2009 the applicant was working in Sub-Regional Office, Solapur i.e. for more than 14 years and was never shifted to any other station, except thereafter to Pune on administrative grounds. The applicant has not challenged his order of transfer from Solapur to Pune and on 06.01.2016 the applicant was again transferred on his request to Solapur, where he continued to work till issuance of the impugned order dated 08.09.2016.

12. It is stated that the applicant was transferred in the same Region without affecting his

seniority or promotion prospects. It is stated that there is no violation of any provision of the Transfer Policy giving general guidelines issued by DOPT. Throughout 32 years of his service, the applicant was transferred on two occasions only that too on administrative grounds and within the same Region. He, therefore, cannot make any grievance regarding impugned transfer order. The involvement of the applicant in commission of serious irregularities while working in Sub-Regional Office, Solapur resulted in his transfer again to Pune Regional Office on administrative grounds. The O.A. is, therefore, liable to be dismissed.

13. On 16.06.2017, the applicant in a rejoinder denied the adverse averments and contentions made in the reply. It is stated that transfer has been effected only on the strength of so called complaint regarding commission of irregularities, which is not investigated and hence the impugned transfer order is nothing but punitive in nature and hence it is liable to be set aside. The allegations made regarding lodging complaint of irregularities committed while working in Pension Reconciliation Section are denied. It is stated that the applicant tried to prevent commission of irregularities while working in the office.

However, the Officer In-charge, Solapur did not verify the complaints received regarding alleged irregularities while working in Pension Reconciliation Section nor cross verified with the applicant's work nor forwarded it to the competent authority such as C.B.I., Vigilance, Anti Corruption Bureau nor put his team to verify the allegations. Hence the impugned order of transfer under the guise of it being in public interest on administrative exigency is nothing but a punitive transfer, which is liable to be set aside.

14. The unauthorized agents like Shri Mohamad Shaikh and Shri Satyanarayan B. Lagishetti, who were not concerned with the E.P.F. Organization were considered illegally and applicant was transferred. Hence the impugned order is liable to be set aside. It is also stated that the relieving order was issued without issuing transfer order, for this reason also the impugned order is liable to be set aside.

15. On 09.03.2018, when the matter was called out for final hearing, heard Shri Vicky Nagrani, learned Advocate for the applicant and the reply arguments of Shri R.R. Shetty, learned Advocate for the respondents.

16. We have carefully gone through the records

including the pleadings of the parties and documents produced by them in support of their rival contention.

17. We have also considered the various citations and decisions relied on by parties in support of this case.

FINDINGS

18. The only controversy involved for resolution of this Tribunal in the present O.A. is whether the impugned order of transfer is liable to be set aside as illegal, improper, incorrect or arbitrary, by exercising the power of judicial review vested in this Tribunal.

19. So far as transfer of Government employee is concerned, the law laid down through catena of decisions rendered by Hon'ble Supreme Court, various High Courts and Benches of Central Administrative Tribunal is well settled. It is needless to say that transfer is an integral incidence of service, especially when it is a transfer of Central Government employee with 'All India Liability', unless it is specifically mentioned in the appointment order that the employee is not liable to be transferred. It is also settled law that scope, extent and power of judicial review to interfere with the order of transfer issued by Competent

Authority is limited, inasmuch as it is possible only when it is shown that the transfer is effected by an authority not competent to do so or that it resulted in violation of any express provision of statute or that it suffers from malice. Transfer can be challenged on one more ground besides the above that it is punitive in nature inasmuch as issued by way of punishment without resorting to the provision of the relevant Discipline and Appeal Rules for initiating a disciplinary proceedings and has been chosen as a via media. It is also settled that it is entirely within the discretion of Competent Authority as to when, where and at what point of time a public servant is to be transferred from his present posting and Courts or Tribunals will not be justified in interfering with such discretion unless any of the above four contingencies exists.

20. To mention in brief, in **Rajendra Singh & Another Vs. State of Uttar Pradesh and Others, 2010.**

(1) SLR 632 it has been held as under:-

"a Government servant does not have any vested right to remain posted at a place of his choice, nor can he insist that he must be posted at one place or the other because no Government can function in such manner."

21. Further in a landmark decision **in Shilpi Bose Vs. State of Bihar, AIR 1991 SC 532** on the

scope of judicial review to interfere with the transfer order, it has been held as under:-

"In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest."

22. The scope of judicial review has been further clarified and interpreted in another landmark decision in **Airport Authority of India Vs. Rajeev Ratan Pandey, Judgments Today, 2009 (10) Supreme Court 472,** in the following words:-

"... scope of judicial review is limited and High /court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer."

23. Putting restriction on Government servant to remain at one place of service, it has been held in **National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan, 2001 (8) SCC 574** as under:-

"No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."

24. The above view has been reiterated by Hon'ble Supreme Court in **State of U.P. Vs. Siya Ram, AIR 2004 SC 4121** and **Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey, (2004) 12 SCC 299.**

25. So far as prerogative of the Government/employer to transfer the Government servant is concerned, it has been held in **State of U.P. Vs. Gobardhan Lal, (2004) 11 SCC 405** as under:-

"that transfer is prerogative of the authorities concerned and court should not normally interfere therewith, except when an order of transfer is shown to be vitiated by mala fides, or is in violation of any statutory provision, or has been passed by an authority not competent to pass such an order... No Government can function if the Government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires."

26. Normally in every case involving challenge to the transfer order, it is alleged that transfer is against the existing guidelines or policy framed by the concern Department. The transfer policy Annexure A-11 produced on record in the present case, nowhere shows that it has been framed by the Provident Fund Organisation nor by Ministry of Labour and Employment to deal with the transfer of its employees. Interpreting the word 'guidelines' or 'policy' and its application, it has been held in **Union of India Vs. S.L. Abbas, AIR 1993 SC 2444** as follows. Beside above, it also deals with the power of judicial review to quash the transfer order.

"An order of transfer is an incidence of Government service. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of statutory provisions, the Court cannot interfere with it. There is no doubt that, while ordering the transfer the

authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, the husband and the wife must be posted at the same place. The said guideline, however, does not confer upon the government employee a legally enforceable right. Executive instructions issued by the Government are in the nature of guidelines. They do not have statutory force."

27. Now turning to the merits of the case, on perusal of the pleadings of the parties, it is obvious that transfer has been challenged only on two main grounds namely that it is in violation of the general policy on transfer since effected before completion of three years tenure at Solapur when on the previous occasion the applicant was transferred from Pune to Solapur on his request on 16.01.2016 itself and again retransferred to Pune by the impugned order dated 08.09.2016. Second ground is that impugned transfer is punitive and arbitrary.

28. It is true that the applicant has been shifted from Solapur to Pune within nine months i.e. before completion of three years tenure. Pune is admittedly not a hard station. It appears that under the general policy/guidelines (Annexure A-11) tenure of three years is prescribed. However, Government

always reserve a right to transfer any of its employees even before completion of the prescribed tenure. This is so because if such right is not reserved then the employee may exploit the situation and it will be difficult for the employer to carry on smooth Administration. It appears from perusal of the general policy on transfer relied upon by applicant that it has been framed after taking into consideration the instructions issued by Department of Personnel & Training. This transfer policy is the extract from certain book comprising of Page 215 to 220 only. The same does not appear to be complete nor it can be gathered from its perusal as to which department has actually framed it. In view of it, a general statement is made by the learned Advocate for the applicant that unless the employee completes three years tenure, he cannot be transferred. However, as stated earlier, no such policy/guidelines appeared to have been framed by the Employees Provident Fund Organization or by Nodal Ministry of Labour and Employment and even if there is any such policy, the respondents reserve the right to transfer any employee before completing such tenure as stated earlier. By any stretch of imagination it cannot be said that the period of 3 years tenure is minimum, but it is always treated as

maximum period during which employee can continue at a particular station unless transferred. Hence, the Organization exercises the discretion to transfer its employee even before completion of three years.

29. In the present case, the applicant has been transferred on complaints received against him regarding irregularities committed while working in Pension Reconciliation Section. It is stated by the respondents that its cognizance has been taken by the office of the Central Provident Fund Commissioner and a audit was undertaken through a special team. It was only thereafter that applicant was transferred. According to applicant, this is nothing but a punitive transfer, especially when on the previous occasion he was exonerated of the charge of misconduct levelled against him on the allegation that he routinely delayed the settlement of claims regarding payment of employees Provident Fund vide order dated 04.05.2016 *Annexure A-4* passed by the respondent No.1.

30. It is also stated by respondents that oral and written complaints were received from the Member Central Advisory Committee on Beedi Workers Welfare Fund against the applicant and hence on administrative grounds, it was found necessary to transfer him since the irregularities committed may

not be of such a nature to prove misconduct on the part of the applicant. For this reason it was not felt necessary to hold a disciplinary inquiry for imposition of punishment for the said lapses.

31. It is not disputed that on his transfer from Pune to Solapur in January 2016 the applicant was made to work in different sections in the same office premises with short intervals, such as inward and outward section, legal section and finally in Pension Reconciliation Section. It appears that on the complaint regarding irregularity or regarding his attitude received from Member Central Advisory Committee on Beedi Workers Welfare Fund, no disciplinary action was initiated against the applicant. However, as stated earlier it was investigated through Special Audit Team, before applicant is shifted from the present post on administrative grounds.

32. In this respect it may be stated that it is not that every complaint made against the employee should be dealt with by taking recourse to the disciplinary proceedings. The same can be administratively dealt with and it is not necessary that in every case disciplinary proceedings for misconduct should be initiated against the employee. This is so because the things can be set right by

other mode, which can very well be adopted by the Department. However, adopting one of the alternative modes of transferring the employees in every case, it cannot be said to be punitive in nature.

33. It cannot be gathered from record that simply because the applicant has been shifted from one unit/section to other within the same office premises, any adverse inference can be drawn against the respondents to the effect that impugned transfer order has not been effected in the interest of office exigency or in public interest.

34. It is true that it is the settled law that a transfer should not be effected as a punishment without resorting to the disciplinary action. However, in the present case, it cannot be gathered from material produced on record by the respondents that the applicant has been transferred by way of punishment in lieu of holding regular enquiry. As stated earlier, it was felt necessary to transfer the applicant on administrative grounds after making some investigation in the matter of irregularities committed by him while working in Pension Reconciliation Section and on complaints received from the Member Central Advisory Committee on Beedi Workers Welfare Fund and then a decision was taken

to transfer him. It cannot be said that the said decision is in any manner illegal, improper and incorrect. It cannot be said that simply, because the applicant was re-transferred to Solapur eight months ago, he cannot be shifted to any other station before completion of three years tenure. He has been shifted in the organizational interest and also on administrative grounds as stated above and also to protect his interest in order to avoid recurrence of any irregularities while working as Senior Social Security Assistant and to avoid any complaint from any other authority.

35. During the course of arguments, learned Advocate for the applicant relied on the decision rendered by this Tribunal in **Prashant J. Hulyalkar Vs. Union of India & Another, OA No.304/2014 decided on 29.01.2015** and submitted that the transfer order of the applicant therein was challenged as punitive in nature and the same was, therefore, quashed. Other grounds were also raised. In that case reliance was placed on the decision rendered by Hon'ble Supreme Court in **Somesh Tiwari Vs. Union of India & Others, (2009) 2 SCC 592** in which it has been held that if an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. It is also

held that the respondents therein have adopted a shortcut method to punish the applicant without taking prescribed and permissible recourse of initiating departmental proceedings against him for the alleged lapses.

36. After considering the contentions of both the parties, the said OA was allowed by this Tribunal. In that case, the report regarding unsatisfactory work of the applicant was also involved and considered.

37. In the present case although some complaints have been received regarding irregularities committed, there is no report regarding unsatisfactory work of the applicant. Further, in that case in paragraph No.33, so far as report of unsatisfactory work is concerned, it is observed that it is the settled legal position that transfer cannot be treated as a punishment. However, it is also the settled law that transfer cannot always be used as punishment or effected in lieu of punishment and, hence transfer should not be effected in violation of the above legal propositions. As stated earlier, in the present case although there were some complaints regarding irregularities committed and the applicant was shifted from one unit to other and thereafter was

transferred in public interest, it cannot be said that the facts of the case relied upon by the applicant are identical, since in the present case, there is no report regarding unsatisfactory work of the applicant although some irregularities in his work were noticed. As such it cannot be said that the decision relied upon by the applicant and the observation recorded by this Tribunal in Paragraph Nos.34 and 35 of order in aforesaid case are applicable to the present case.

38. Learned counsel for the applicant further placed reliance on the decision rendered by the Hon'ble High Court of Madras in S. Ramasamy Vs. The Director of Town Panchayats, Writ Petition No.31431 of 2015 decided on 05.07.2016. In that case although the applicant therein was initially transferred on his request to Udhagamandalam Municipality in Nilgiris District, he was shifted therefrom after about 9 months only. Impugned order of transfer was challenged on the ground that he was frequently transferred within short span. The issue regarding his integrity is also involved in that case. However, it cannot be gathered that the applicant therein was transferred in lieu of punishment nor his integrity was ever doubted. The decision rendered in Somesh Tiwari Vs. Union of India

(referred supra) is also relied upon in the aforesaid case of S. Ramasamy. Referring the consequences of transfer as stated by Hon'ble Kerala High Court in case of P. Pushpakaran Vs. Coir Board and Another, 1979 (1) LLJ 139, it was observed that transfer can uproot a family, cause irreparable harm to an employee and drive him to separation. In paragraph No.24, it was observed as under:-

"24. The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes, it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is extensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer."

39. On the basis of the aforesaid two decisions, it has been further held in Ramaswamy's case (referred supra) in paragraph No.13 of the order as under:-

"13. Thus, it is evident from the decision of the Honourable Supreme Court as well as the decision of Kerala High Court that if an order of transfer is

passed with an intention to indirectly punish the employee for alleged misconduct, such an order of transfer is illegal. In this case, in the counter affidavit of the first respondent, reference has been made against the petitioner relating to his alleged misconduct and such misconduct would have weighed the first respondent to pass the impugned order of transfer as a measure of punishment or in lieu of punishment. Therefore, on this ground, the impugned order of transfer has to be set aside.

40. In the operative paragraph Nos.15 & 16 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.

16. For all the above reasons, the impugned order of transfer dated 01.10.2015 passed by the first respondent is set aside. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition Nos.1, 2 and 4 of 2015 are closed."

41. Although the law laid down in the aforesaid case of S. Ramasamy (*supra*) cannot be denied, it is obvious that the facts of the said case are distinct inasmuch as the very performance of the applicant therein was at stake and without giving any opportunity to him of showing improvement, he was transferred. In the peculiar facts and circumstances of that case, his transfer was set aside, since held to be by way of punishment to him, which is not so in the present case.

42. Learned Advocate for the applicant further placed reliance on the decision rendered by Hon'ble Supreme Court in Somesh Tiwari Vs. Union of India, (*referred supra*). In that case, the enquiry was held against the applicant therein on anonymous letter, inspite of the directives of the Central Vigilance Commission, no enquiry would have been initiated against him. However, on enquiry, the allegations were found to be untrue and still the applicant was transferred. In the peculiar facts of the case, it was held that the order suffers from malice. The facts of the present case are distinct since malice is neither alleged nor proved nor any enquiry against the applicant on the complaint received was

held and based on the complaint regarding irregularities committed by him while working in Pension Reconciliation Section, he was transferred in public interest.

43. As such, it cannot be said that the ratio laid down in the aforementioned case is in any way helpful to the applicant to hold that the impugned transfer is in lieu of punishment. The record clearly shows that the respondents did not find it appropriate or necessary to initiate regular disciplinary proceedings against the applicant on the basis of the complaints received and the same was administratively dealt with by transferring the applicant. In such circumstances of the case, it cannot be said that the impugned transfer order is liable to be set aside.

44. Lastly, the learned Advocate for the applicant placed reliance on the decision rendered by Guwahati Bench of Central Administrative Tribunal in **Refik Gerik Bagra Vs. The Union of India & Others, OA No.040/00013 of 2014 decided on 11.09.2015.** In that case, a representation was made by the applicant requesting his transfer from NRC on Yak Dirang, West Kameng, Arunachal Pradesh to ICAR Research Centre, NEH Region, Arunachal Pradesh Centre, Basar, West Siang Dist, Arunachal Pradesh.

His representation was considered favourably and he was transferred accordingly. He was, however, again transferred within less than 2 months to ICAR Research Complex for NEH Region, Nagaland Centre with immediate effect. The impugned transfer order was issued by way of punishment. The Tribunal in the peculiar facts of the case set aside the order of transfer relying on decision rendered in Somesh Tiwari (referred supra) and other decisions.

45. In the aforesaid case, no malafide was, however, alleged. The facts of the present case are distinct although the complaint regarding irregularity was administratively investigated and no departmental proceeding was initiated against the applicant. However, in the interest of administration, the applicant is transferred. In such circumstances of the case, it cannot be said that the impugned order of transfer is punitive in nature.

46. As against this, during the course of arguments, learned Advocate for the respondents relied on a decision rendered by the Hon'ble Supreme Court in Union of India and Others Vs. Janardhan Debanath and Another, 2004 SCC(L&S) 631. In that case transfer on the ground of inefficiency or misbehaviour was challenged. Quotting the provisions

of Fundamental Rules 15 and 14-B, it was held that transfer to another post in the same cadre on account of inefficiency or misbehaviour is not barred. It was a case pertaining to Department of Post. In that case, transfer was effected on the ground that the employee concerned was undesirable as he had misbehaved with his senior. A question arose whether he can be transferred without holding any departmental enquiry.

47. It has been held in the aforesaid case that the same is permissible unless it adversely affects the service conditions or status or service prospects or leading to penal consequences. In other words, the regular departmental enquiry will be necessary in case any of the aforesaid four factors are directly involved in consequence of transfer, affecting the career of the employee. In the present case, no such issue is involved since the applicant has been transferred in the same zone on the same post without any reduction in pay nor on lower post. It is also not his contention that due to impugned transfer, his seniority in cadre or promotional avenues are adversely affected and hence it is liable to be set aside.

48. As such, we do not find any force in the contention of the learned Advocate for the applicant

that the impugned order of transfer effected without holding regular departmental proceeding against the applicant is illegal or improper and, hence it is liable to be quashed as punitive in nature. In the aforesaid case, it is held that in such type of cases, utmost latitude should be given to the department concerned to enforce discipline, decency and decorum in public service. Hence, impugned order of transfer is fully justified.

49. In the aforesaid case of **Janardhan Debanath** (*supra*) the question as to whether transfer in a particular case was in the interest of public service is also considered and it is held that it requires factual adjudication and examination of that question by High Court in its jurisdiction under Articles 226 & 227 is disapproved, meaning thereby that it is for the department or transferring authority to take a rational decision regarding transfer of employee in public interest and such decision cannot be lightly interfered with unless there are very strong grounds to do so.

50. In the present case, as stated and discussed above, we do not find that any ground is made out by the applicant so as to interfere with the said decision taken by the transferring authority. The issue of seniority of applicant or

his promotional prospects are also not involved in the present case on account of his transfer to Pune as stated earlier. As such, he is fully protected even on his transfer to Pune on administrative grounds except that he will suffer some hardship in shifting his family to Pune which is inevitable. As such, we do not find any force in the contention of the learned Advocate for the applicant that the impugned transfer order is illegal or arbitrary exercise of power by the respondents and, hence it is liable to be quashed.

51. Another decision relied on by the learned Advocate for the respondents again pertains to Hon'ble Supreme Court in **Registrar General, High Court of Judicature of Madras Vs. R. Perachi and Others, (2011) 12 SCC 137.** In that case, Sheristadar (Court Officer) working in High Court was transferred on administrative grounds pending disciplinary proceeding against him for misconduct. A doubt on his integrity was also raised in that case. While considering scope of judicial review to interfere with the transfer order, it was held that:-

"Transfer is an incident of service and one cannot make a grievance if transfer is made on administrative grounds and without attaching any stigma. It was further held that in matter of transfer

of a Government employee, scope of judicial review is limited and High Court cannot interfere with order of transfer lightly since courts cannot substitute their own decisions in the matter.

Thus limits of power of judicial review are well settled in the aforesaid decision, when challenge to the transfer order is considered by the Tribunal.

52. It is thus obvious from the aforesaid discussion that although transfer cannot be effected as a punishment without resorting to the provisions of Discipline and Appeal Rules by holding a regular enquiry regarding the misconduct, the same is permissible when there is no grave misconduct as such and complaint is received regarding some irregularities or lapses committed by the employee while working in his capacity as a Government servant. In such cases only transfer without holding regular enquiry is permissible and it cannot be said that it is punitive in nature.

53. From the above discussion, we do not find any merit in the present OA. It cannot be said that the impugned transfer order has been effected in violation of any provision of policy or guidelines or it is punitive or arbitrary nature, simply because the impugned transfer order was issued while

the applicant was on leave. It hardly makes any difference since although on leave of any kind he continued to be in Government service and hence there is no bar or prohibition in issuing transfer order during leave period of any employee.

54. It is stated by learned Advocate for the applicant that no transfer order has been issued or served and only relieving order is issued. However, in the impugned order dated 08.09.2016 there is a specific reference of office order No.MH/PF/SRO/Special Leave Petition/HRM/2016-17/80/142 dated 08.09.2016 issued by the Employees Provident Fund Organization, in pursuance thereof the applicant and one Shri Danam Raja who is also Social Security Assistant has been transferred to Pune. The respondents have also shown that another official Shri Velamuri Vijay, Social Security Assistant is also transferred to Pune by the order dated 09.09.2016. It is pointed out that all these officials were involved in commission of irregularities and on complaints received, they were transferred. As such, it is not that the applicant alone is transferred and hence it cannot be said that the impugned order of transfer is arbitrary or discriminatory in any manner whatsoever as alleged by the applicant. The applicant has not challenged

competency of respondent No.2 to issue the impugned transfer order nor any malafides are alleged or proved in issuing it.

55. From the aforesaid discussions, it is obvious that there is no merit in any of the grounds raised by the applicant for challenging the impugned transfer order. The OA is, therefore, liable to be dismissed. It is, accordingly, dismissed.

56. In the facts and circumstances of the case, parties are, however, directed to bear their respective cost of this OA.

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

(R. Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J) .

H/ma.