

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

**ORIGINAL APPLICATION NO. 368 OF 2017
CONNECTED WITH
ORIGINAL APPLICATION NO. 369 OF 2017**

Date Of Decision:- 5th September, 2018.

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

OA No. 368/2017

Shri. S.J. Fernandes

Age: 54 years,
Working as Technical Assistant,
Manager Refrigeration Air Compressors.
Residing at C-704, Dheeraj Darshan,
Kokan Nagar, Jogeshwari (E),
Mumbai 60. **...Applicant**
(**Applicant by Advocate Shri. Vicky Nagrani**)

Versus

1. Union of India,

Through the Secretary,
Ministry of Defence, South Block, New Delhi 110001.

2. The Chief of the Naval Staff

Integrated Headquarter (for DCP)
Ministry of Defence (Navy)
Dte of Civilian Personnel
D-II Wing, Sena Bhawan,
New Delhi 11001.

3. The Flag Officer Commanding in Chief

Western Naval Command (HQ)
Shahid Bhagat Singh Road, Mumbai 23.

4. The Admiral Superintendent

Naval Dockyard Mumbai 400023. **...Respondents**
(**Respondents by Advocate Shri. B.K. Ashok Kumar**)

Connected with OA No. 369/2017

Shri. Bharat R. Narayankar

Age: 54 years,
Working as Technical Assistant (Const)
Oic NIDC Naval Dockyard Mumbai
Residing at B-23, Ganesh Leela CHS,
Gaondevi Mandir Road, Kalwa (W)
Thane 400605.

...Applicant

(Applicant by Advocate Shri. Vicky Nagrani)

Versus

1. Union of India,

Through the Secretary,
Ministry of Defence, South Block, New Delhi 110001.

2. The Chief of the Naval Staff

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Shahid Bhagat Singh Road, Mumbai 23.

4. The Admiral Superintendent

Naval Dockyard Mumbai 400023. *...Respondents*
(Respondents by Advocate Shri. B.K. Ashok Kumar)

Reserved On : 21.08.2018

Pronounced on: _____

O R D E R
PER:- SHRI. R. VIJAYKUMAR, MEMBER (A).

By this common order, we propose to dispose of the
OA Nos.368/2017 and 369/2017 as they involve a common issue
of transfer.

2. These applications were filed on 13.06.2017 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs which are identical in both the OAs:-

“8(a). This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned transfer order dated 26.12.2016, qua the applicant and order dated 07.06.2017 and the applicant be permitted to work as Technical Assistant at Naval Dockyard, Mumbai with all consequential benefits.

(b). Costs of the application be provided for.

(c). Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.”

3. The applicant in OA No.368/2017 was appointed as Highly Skilled Worker Grade-I on 23.02.1984 at Mumbai and he has remained there until his promotion on 29.02.2016 as Technical Assistant which has All India Transfer Liability. Based on representation made by the Foreman including applicant, all 12 Foreman promoted as Technical Assistant were retained at Mumbai. On 26.12.2016, the applicant was transferred to Karwar Naval base in impugned orders (Annexure A-1) and

their movements were directed to be completed by 23.01.2017. The applicant filed representations on 31.01.2017, 15.02.2017 and then filed an application OA No. 344/2017 dated 30.05.2017 before this Bench which was heard and the respondents were directed to consider the representations of the applicant and pass a reasoned and speaking order from which emanated the impugned orders. The applicant thereafter, filed this OA and obtained an interim order of stay on 14.06.2017 which persist to this day.

4. Applicant in OA No.369/2017 joined as a HSK-I on 24.02.1988 at Mumbai, served for five years from January 1991 to May 1996 at INS Shivaji at Lonavala, and has been at Mumbai ever since. He claims to have been considered for promotion as Technical Assistant in 2014 but refused promotion on compassionate grounds since he did not wish to be transferred and refusal was accepted for which he continued to work as Foreman. He was again considered in 2016 for promotion and after promotion he was transferred to Vizag in orders dated 29.02.2016 for which he represented and claims that his representations were considered favourably and he was retained. However, he was shifted to Karwar by the impugned transfer order dated 26.12.2016 in common with the Applicant in

OA No.368/2017. He again requested retention at Mumbai in representation dated 27.12.2016 citing medical problems in his family and his supervising officer also wrote a letter for his retention on 30.12.2016 adding the reason that he had spent five years in out-station posting at Lonavala. He also filed an OA No.345/2017 dated 30.05.2017 which was disposed of directing the respondents to pass a reasoned and speaking order on his pending representation for which the respondents have passed the impugned orders.

5. The applicants argued that they had been discriminated against, because within nine months of their retention on compassionate ground in the promotional post of Technical Assistant at Mumbai, they have been transferred in the impugned transfer orders. Applicant in OA No.369/2017 has supported his claim with information that he had served five years at an out-station posting in Lonavala. The applicants have also referred to a direction issued by the respondents on 09.06.2017 (Annexure A-11) as a Staff Minute Sheet directing each of the two applicants to collect the speaking orders issued by the respondents at New Delhi and to also report to the relevant office at noon on 12.06.2017 to collect their movement orders. The applicants considered that the issue of these orders

even without service of the speaking orders dated 07.06.2017 suggest a vindictive attitude on the part of the respondents. The applicants have enclosed speaking orders passed by the respondents in accordance with the directions of this Tribunal and which are issued in reference No. CP(G)/4001/PT-TAs/1 dated 07.06.2017 which states that their representations have been examined and present a table which shows that the Mumbai unit has 61% excess staff with surplus of 22 TAs whereas there is acute shortage of 60% (TA-11) at Karwar and 51% (TA-25) at Vizag. Therefore, they state that 10 TAs who have not been transferred out of Mumbai even once or completed tenure of 20 years at Mumbai were identified and transferred to Karwar and Vizag purely on service exigencies. Further, the applicants were part of the 10 TAs as they had already completed more than 20 years at Mumbai. They also mention that this matter had been reviewed by the FOC INC (West) in August-September 2016 during his inspection at Karwar and a decision had been taken in this regard. Further, they have stated that in accordance with the Transfer Policy dated 11.08.2015, they were overdue for outstation transfer since the post of Technical Assistant has all-India-Transfer-Liability. They have also advised the applicants that the tenure at Karwar

is only three years and on completion, a choice station is offered to the individual and that given the reasons they have stated of medical or domestic problems, they were posted to Karwar because that was the nearest station from Mumbai.

6. In their reply, the respondents have reiterated all these aspects. In regard to the claim of the applicant in OA No. 369/2017 that he had refused promotion as Technical Assistant in 2014, respondents point out that he had made an application on 10.12.2014 on conditional basis citing compassionate grounds and that if he could not be retained in Mumbai, he should not be considered for promotion. This conditional application was also submitted to the competent authority prior to convening DPC for the year 2014-15 and 2015-16 which was held on 11.02.2016. They urged that the transfer orders were service exigencies as mentioned in their speaking order (Annexure A-2). They also cite the cases of *Union of India V/s. S.L. Abbas, etc.*, in support.

7. The applicants have filed rejoinder stating that there are seniors who have completed 33/36 years but they have been overlooked. Further, the applicant in OA No.369/2017 affirms that he has done an outstation tenure of five years. Therefore, the applicants argued that the rules have not been

applied uniformly. Further, they state that the posts below Technical Assistant are not transferable and therefore, should not have been taking into account for computing length of service.

8. We have gone through the OA No.368/2017 alongwith Annexures A-1 to A-12 filed by the applicant, written statement filed on behalf of respondents and Rejoinder alongwith Annexures A-13 and A-14 filed by the applicant and have carefully examined the various documents annexed in the case.

9. We have gone through the OA No.369/2017 alongwith Annexures A-1 to A-13 filed by the applicant, written statement filed on behalf of respondents and Rejoinder alongwith Annexures A-14 and A-15 filed by the applicant and have carefully examined the various documents annexed in the case.

10. We have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in the case.

11. The law on judicial intervention into matters of transfer is well settled through a catena of decisions by the Apex Court in, B. Varadha Rao v. State of Karnataka, AIR 1986 SC 1955,

Shilpi Bose v. State of Bihar, *AIR 1991 SC 532, Union of India v. S.L. Abbas*, *AIR 1993 SC 2444, Union of India Vs. N.P. Thomas, AIR 1993 SC 1605; Rajender Roy Vs. Union of India, AIR 1993 SC 1236; Ramadhar Pandey Vs. State of U.P. & Ors., 1993 Supp (3) SCC 35; N.K. Singh Vs. Union of India & ors., (1994) 6 SCC 98& AIR (1995) SC 423; Chief General Manager (Tel.) N.E. Telecom Circle Vs. Rajendra Ch. Bhattacharjee, AIR 1995 SC 813; State of U.P. Vs. Dr. R.N. Prasad, 1995 (Supp) 2 SCC 151; Union of India &Ors. Vs. Ganesh Dass Singh, 1995 (Supp) 3 SCC 214; Abani Kante Ray Vs. State of Orissa, 1995 (Supp) 4 SCC 169; Laxmi Narain Mehar Vs. Union of India, AIR 1997 SC 1347; State of U.P. Vs. Ashok Kumar Saxena, AIR 1998 SC 925; Mysore Paper Mills Ltd., Bangalore v. Mysore Paper Mills Officer Association, Bhadravati and another, 1999 6 SLR 77, *National Hydroelectric Power Corporation Ltd. Vs Shri Bhagwan, (2001) 8 SCC 574; Public Services Tribunal Bar Association Vs. State of U.P. & Ors., AIR 2003 SC 1115; State of U.P. Vs. Siya Ram, AIR 2004 SC 4121; State of U.P. v. Gobardhan Lal, (2004) 11 SCC 405; Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey, (2004) 12 SCC 299; Union of India Vs. Janardhan Debanath, (2004) 4 SCC 245, Masood Ahmad v. State of U.P., 2007(6)SLR 469 (SC), Airports Authority of India v. Rajeev Ratan**

Pandey, *JT 2009 (10) SC 472 and Rajendra Singh v. State of UP and others*, 2010 1 SLR 632.

12. It is entirely upon the competent authority to decide when, where and at what point of time a public servant is to be transferred from his present posting. Transfer is not only an incident but an essential condition of service. It does not affect the conditions of service in any manner. The scope of judicial review in these matters is very limited. The employee, “... 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,” as noted in *Rajendra Singh & Anr v. State of Uttar Pradesh & Ors (2009) supra*. As was also held in *Shilpi Bose (1991) supra*,

“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.”

13. The Hon'ble Apex Court in *Airports Authority of India v. Rajiv Ratan Pandey & Ors (2009) supra* held in para 10 that “... 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.”

14. In *National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan, (2001) supra 8 SCC 574*, it was held that: "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. "This aspect has been reiterated in the decisions of the Hon'ble Apex Court in *Siya Ram (2004)*, *KVS v. Damodar Prasad Pandey (2004)* and *N.K. Singh (2004) supra*. In the decision on *Gobardhan Lal (2004) supra*, the Hon'ble Apex Court also emphasised "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."

15. On the aspect of the application of transfer guidelines, the Hon'ble Apex Court considered the matter in the case of *UOI v. S.L. Abbas (1993) supra* and held (as in abstract):

“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.”

16. On the aspect of bias, respondents rebut by pointing out the case of *Shri. O.P. Tiwari* mentioned by both the applicants who were belongs to the batch of 2015-16 while these applicants belong to the batch of 2014-2015.

17. On the issue of transfer, this Tribunal has a very limited jurisdiction. In case the applicants seek to challenge a transfer on the grounds of vindictiveness or bias and *mala fide*, a considerable burden falls on them. This has also been highlighted in various judgments of the Hon'ble Apex Court. The applicants in the present cases have adduced very little evidence in support of any bias and have not been able to contest the arguments and reasons put forth by the respondents in their

speaking orders. It is obvious that the respondents have a nationwide task cut out for them and they have to use their organisational resources in the most efficient manner for achieving their targeted purposes. It is left to their good sense and judgment to deploy their employees each of whom is endowed with different skills and trades at various locations so as to achieve zonal objectives and overall objectives. In the present case, the applicants have made no efforts to show where they stand in respect of similarly placed TAs from their trade and a very general argument has been placed for consideration by this Tribunal that cannot merit any intelligent consideration. As a result, it is rather unfortunate that the applicants have managed to delay the programme of action of the respondents by nearly two years through the adoption of this method of legal redress and considering the facts placed before this Tribunal, there appears to be little ground in support of their arguments and plea for retention in Mumbai.

18. In these circumstances, while dismissing both the OAs as lacking in merits, the applicants are directed to proceed immediately to join at the new place of posting availing actual travel costs' reimbursement.

19. Accordingly, both the OAs are disposed of, as above. No costs.

20. A copy of this order may be placed in both the respective OAs.

(R.N. Singh)
Member (J)

(R.Vijaykumar)
Member(A)

srp.