

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

ORIGINAL APPLICATION NO.426/2017

Wednesday this, the 28th day of February, 2018.

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

Mrs. Bindu Venugopal, Age 46 yrs. Wife of Venugopal S P, Working as Senior Technical Officer, ICAR - CIRCOT Mumbai (under transfer) residing in : D-8, 402, Tunga CHS, Lokdhara, Kalyan East 421306. **...Applicant**

(By Advocate Ms.Manda Lokhe)

Versus

1) Union of India, through The Secretary (Department of Agricultural Research and Education, DARE) & Director General, Indian Council of Agricultural Research (ICAR), Krishibhavan, New Delhi - 110001.

2) Director, Central Institute for Research on Cotton Technology (CIRCOT), Adenwala Road, Matunga, Mumbai - 400019.

3) Dr. P.G. Patil, Director, Central Institute for Research on Cotton Technology (CIRCOT), Adenwala Road, Matunga, Mumbai - 400019.

4) Senior Administrative Officer, Central Institute for Research on Cotton Technology (CIRCOT), Adenwala Road, Matunga, Mumbai - 400019. **....Respondents**

(By Advocate Shri M.S.Topkar)

Reserved on :- 10.11.2017

Pronounced on:- 28.02.2018

O R D E R

Per:- R. Vijaykumar, Member(A)

This OA has been filed to quash orders of transfer bearing Ref. No. Adm-I/82/87/II dated 04.07.2017 by which the applicant who is a Senior Technical Officer at Indian Council of Agricultural Research (ICAR) - Central Institute for Research on Cotton Technology (CIRCOT) has been transferred to Quality Evaluation Unit (QEU) of CIRCOT at Guntur. The order which was served on her also relieved her from duties w.e.f. 04.07.2017 and she has been asked to directly take up her duties at Guntur. The order is stated to be issued in public interest and with the approval of the competent authority.

2. On the application and by reference to the reply filed by respondents even by the first hearing on 11.7.2017, this Tribunal granted interim relief which continues to date. The respondents filed a WP against the interim order and the Hon'ble High Court passed orders

ex parte on 5.12.2017 directing disposal by 31.1.2018 and after the case was adjourned to 22.1.2018, it was heard finally.

3. The applicant has filed this O.A. seeking the following reliefs:

"8.1) 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 orders dated 04.07.2017 with all consequential benefits.

8.2) This Hon'ble Tribunal may be pleased to further direct the respondents to pay exemplary costs to the Applicant of this application.

8.3) The Hon'ble Tribunal may further be pleased to pass any other order which the Hon'ble Tribunal deems just and proper in the nature and circumstances of the case."

4. The Central Institute for Research on Cotton Technology (CIRCOT) is an ICAR institution devoted to testing of different textile materials and cotton by-products supplied by textile mills, government departments, and through the private sector. It has facilities at Mumbai Headquarters, Ginning Training Centre (GTC) Nagpur, and Quality Evaluation Units (QEU) at Guntur, Dharwad (Karnataka), Guntur (AP),

Sirsa (Haryana) and Surat (Gujarat). The Institute has scientific, technical, administrative and supporting staff and is headed by a Director.

5. It is relevant to consider reference to various technical job categories in ICAR system as applicable to CIRCOT as drawn from Chapter-I of the Establishment & Administration Manual of ICAR. These are :

a) Scientists : Scientific personnel shall be those who are engaged in agricultural research and education (including extension education) whether in physical, statistical, biological engineering, technological or social sciences. This category shall also include persons engaged in planning, programming and management of scientific research.

b) Technical : Technical personnel shall be those who perform technical service in support of research and education whether in the Laboratory, Workshop or field, or in areas like Library, Documentation, Publication and Agricultural Communication. This description is

further elaborated in Chapter 1.2.2 to state that Scientists are supported in their research endeavor by a large number of technical staff who enhance research output of the ICAR. Such technical staff help in undertaking activities in dissemination of technologies and to organize field and laboratories activities on the one hand and then in organizational activities in terms of Workshop, Library, Press and Editorial, Medical and Para Medical and other allied technical activities.

6. The Applicant is a Chemistry Graduate who joined as Technical Assistant in the Mechanical Processing Division (MPD) of CIRCOT on 05.11.1992, was eventually promoted as Senior Technical Officer in 2013 and has been working for 25 years at Mumbai from initial appointment. On 6/9/2016, ICAR issued guidelines for intra-Institutional transfers covering administrative employees and technical employees and recommending the establishment of a Transfer Committee. The respondents, in the present case of the applicant, issued Office Order No. 15 dated 4/7/2017 transferring the applicant from Mumbai to Sirsa in the public interest. The order cites the approval of competent authority and it is not contested that the order bears the recommendations of the Transfer Committee set up as required in the guidelines. The applicant received impugned orders of transfer and

simultaneous relief issued in Ref Adm.I/99/BV/II/66 dt. 4.7.2017 sent to her while in office, on the same day transferring her from Mumbai to the Quality Evaluation Unit (QEÜ) at Guntur.

7. The applicant filed a representation on 05.07.2017 to Respondent no. 2 which was replied by email by Respondents 2 & 3 on 06.07.2017 affirming the transfer and mentioning that "2. It is also to note that all the technical officers of ICAR-CIRCOT have been given basic training in evaluation of Quality of Cotton Fibres and you having worked for more than 23 years in Mechanical Processing Division should have the basic knowledge of Cotton testing. This knowledge will be very useful for the strengthening of the Guntur Centre by serving in the interest of Cotton Farmers, Trade and Textile Industry of newly established State.". She attributes this transfer to malice on the part of respondent nos. 2 and 3 who have been separately impleaded in this application although respondent no. 3 is regularly posted as Director, which office has been listed as respondent no. 2. The main reasons given by her opposing the transfer are :

a) CIRCOT has no mechanisms of routine transfers of technical staff between

headquarters and field units;

b) the Transfer Committee has not been hastily constituted on 2.5.2017 and is not established in accordance with the guidelines and the orders are, therefore, illegal since Respondent 2 & 3 are themselves part of the Transfer Committee and in the absence of regular HODs, certain other senior staff such as the seniormost Scientist Dr.S.K.Chattopadhyay, Principal Scientist and next seniormost scientist, Dr.Sujata Saxena, Principal Scientist have not been included in this Committee which, therefore, is illegally constituted. Therefore, all its orders suffer from lack of competence;

c) there is no sanctioned strength at Guntur office for technical staff and therefore, the transfer is in violation of guidelines.

d) she has been working in the field of Mechanical Processing in spinning of cotton and blended yarn samples for 23 years and over the last one year, has been posted in the Chemical Processing Section. She claims that her work led to a number of publications

and presentations. In contrast, the QEU at Guntur only does quality evaluation of cotton using instruments such as HVI, for which she has not been trained. No work related to her experience is available at Guntur and is only now at Mumbai;

e) she also claims that there is no need for an additional person at Guntur;

f) No reasons have been given for the transfer except the mention of public interest.

g) no one has been posted in her place at Mumbai headquarters.

h) the Director did not seek her assistance in the Institute, nor did he prefer her for any institutional Committees but has all of a sudden, posted her to Guntur to strengthen that unit which suggests mala fide.

i) the transfer and relieving orders were incorporated in the same communication and they did not provide for 30 days preparation time provided in the guidelines. Further, issuing both together was illegal or improper and did not allow her to make her

representation.

j) that her seniors had not been disturbed in violation of policy and orders had been issued in mid-academic year in July instead of in March as specified in the guidelines;

k) she is settled in Navi Mumbai and is singly taking care of her aged parents and her daughter since her husband is employed at Kochi (Kerala) in a public sector undertaking. Her brother who stays with her is employed and busy touring and cannot be with their parents. Therefore, she needs to remain in Mumbai;

l) she is 46 years of age and has health issues like back pain, acidity and menopausal related health problems for which she needs her family support;

m) the email reply on 6.7.2017 to her representation dt. 5.7.2017 gave very flimsy reasons. Other aspects which according to her support her charge of mala fide are:

(i) that Respondent no. 2 and 3 had a grudge against her because when respondent no. 3 took over in 2014 as Acting Director, he

transferred her from Mechanical Processing Division (MPD) to Technology Transfer Division (TTD) which was under his control but her then HOD (MPD), Dr. S.K. Chattopadhyay, refused to relieve her, citing staff shortage. Respondents no. 2 and 3 called her to his room and repeated his request whereupon she conveyed this information and asked him to talk to HOD, MPD, Dr. S.K. Chattopadhyay. He then called her again after a few days and told her in Hindi: "Uss din to mai aapse pyaar se baat kiya tha, magar...". She claims to have reported this to HOD, MPD and it was recorded in the divisional meeting of MPD she claims that she construed this conversation as sexual harassment.

(ii) not giving her any opportunity for redressal by combining the transfer and relieving order within one communication.

(iii) attempting to seize her personal computer on 05.07.2017 at 11 AM and intimidating her through two senior officers for which she filed a police complaint in Matunga

Police Station on 05.07.2017.

iv) Deleting her from the Institute's biometric system on 04.07.2017 itself without giving her 30 days time for relief as specified in the Transfer Guidelines.

v) He also tried to spoil her APAR for 2014-2015 which she learnt from her HOD, MPD which was because he had a grudge against her.

vi) He had installed a camera just above their table at the canteen to scrutinize and observe applicant and her two colleagues (who have filed OAs heard together) which she alleges was an act of voyeurism.

vii) She also alleges that since the applicant and her colleagues were Malayali, this indicated a strong regional bias on the part of the respondents.

Viii) Some women colleagues have filed cases of sexual harassment against Respondent 2/3 and argues that the Respondents' decision to transfer her and harass her clearly exhibits a perverted and sick mindset because she had shown solidarity with this lady colleague.

8. Respondents have replied stating that the transfer is of a routine nature within the institution and is according to the guidelines set by respondent no. 1 in orders dated 06.09.2016. The Transfer Committee's recommendation was unanimous and there is no question of any personal animus or enmity with the applicant. They state that the posts are sanctioned only for CIRCOT as a whole and not for any individual stations and it is left to the Director, Respondent no. 3 to deploy the services of Technical Staff at various centers as per exigencies of work for which no mala fides can be attached. The applicant has worked for 25 years at the same location in Mumbai, although her services are transferable all over the country as per her terms of appointment. There is no guideline or requirement that seniority principle has to be followed for effecting transfers and the requirement has to be assessed by the Transfer Committee while recommending transfers. They also urge that more than 15 employees have been

transferred over the last two months and except the applicant and three other employees, all others have joined at their respective transfer stations. On this basis, respondents argue that the Director is fully empowered to deploy staff based on administrative requirements and that there is no scope for interference in the transfer orders by this Tribunal.

9. No reply has been filed by Respondents 3 & 4 in this matter.

10. In her rejoinder, the applicant notes that Respondents 3 & 4 have not submitted any reply and questions the authority of Respondent 1.

11. The applicant in her rejoinder refers to the two previous transfer orders of 26.11.2014 which was infructuous and the later order of 27.05.2016 by which she moved to Chemical Division, as suggestive of harassment. She also asserts that there is no mechanism for intra-institutional transfer for technical staff in the institute and refers to the difference between CICR, Nagpur, which is another ICAR

Institute and CIRCOT where the former has specified staff strength in its different units. She also argues that any redeployment etc. of posts can only be done with prior approval from M/o Finance which has not been done in the present case. She denies the claim of the respondents that 15 employees have been given institutional transfers, out of which only 2 persons were done for specific reasons. She also explains that the staff posting is contrary to her past experience over 25 years which is relevant only for use at Mumbai headquarters. She claims that only one Technical Officer is available at Guntur with little work and another person is not needed. She denies that this is a routine transfer and that there are, in her view, no administrative exigencies that require her to be posted at Guntur. She again refers to his grudge against her for not obeying the previous transfer orders and the sexual harassment complained filed by her colleague, Smt.Binu Sunil, whose OA is being heard along with the present application. In regard to the

poor facilities at Guntur where she had been posted, she attributes the Director to having a perverted and sick mindset. She also claims in her application that Respondent no. 2&3 talked about her and referred to her with others as "the woman" which, she condemns as inappropriate sexually explicit word and behaviour.

12. The Annexures A-11 and A-16 show that the Institute had 167 staff strength in position which included scientific, technical, administrative and supporting staff. As against this, there were 99 vacancies. For technical staff, 72 are in position and 40 posts were vacant. The table at A-12, also shows that 4122 samples were tested in Mumbai and revenue was Rs. 35.84 lakhs while at Guntur, only 410 samples were tested and the revenue generated was Rs. 0.97 lakhs. The applicant has contended that the HVI machine in Guntur was under repair and there is no current need for more staff than the single technician currently posted.

13. The applicant has also filed additional affidavits no.Nil and 54/2018, received on

06.10.2017 and 29.1.2018, of developments in her office after interim orders were obtained from this Tribunal, but which are not relevant to decide on the factors that led to the issue of these transfer orders and this additional affidavit is therefore denied admission. Both of these matters are issues that have happened subsequently and are being sought to justify the allegation of sexual harassment and cannot be accepted in the context of the reliefs sought in this application.

14. However, just after filing this application, it appears that the applicant's colleague had filed a sexual harassment complaint that was lodged with the Local Complaints Committee (LCC) since the allegations were against the Head of the Institute and the matter is under investigation since July 2017.

15. During the final hearing on 30.01.2018, learned counsel for applicant has cited a few judgments and provided a compilation to support the case of the applicant. Her arguments were heard. She has revisited all the aspects raised

by the applicant in their several submissions. The learned counsel for respondents also reiterated the stand taken by them and filed a compilation of judgments in support of their stand.

16. We now consider the judgments relied upon by the learned counsel for applicant n her rejoinder. In **Uttam Kujur v. State of Jharkhand and Ors.** (2008 (2) JCR 306), the Hon'ble Jharkhand High Court cites the decision in **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey**, (2004) 12 SCC 299), by which she claims that the Hon'ble Apex Court observed that Courts should not ordinarily interfere with transfer orders unless they are vitiated by mala fides or made in violation of any operative guidelines. By this, learned counsel arrives at the interference that where operating guidelines or rules are enforced or transfer is made in violation of such guidelines, inference in exercise of writ jurisdiction become warranted because here the Apex Court had placed the term guidelines on par with rules. In this case, a

teacher working for 17 years in Madhya Pradesh and residing with her husband was shifted to J&K to make way for a teacher who was employed for 15 years in J&K and had requested posting in Madhya Pradesh. The Hon'ble High Court had differed with the Tribunal and directed her transfer elsewhere within Madhya Pradesh itself despite agreeing that no mala fides were involved. The Hon'ble Apex Court disagreed with the High Court's said direction and upheld the transfer. The learned counsel has clearly erred in placing guidelines on par with statutes for which the correct interpretation would be in line with the decision in **Union of India v. S.L. Abbas**, AIR 1993 SC 2444, discussed later. She refers to **Sarvesh Kumar Awasthi v. U.P.Jal Nigam and Ors.** (2003 (11) SCC 740), where the Apex Court had observed that the power of transferring an officer cannot be wielded arbitrarily, mala fide or any exercise against efficient and independent officers. She has also referred to the Judgment of the Hon'ble Gauhati High Court in **Andrew Banrilang Umdor v.**

State of Meghalaya and Ors. (2007 (4) GLT 712), which ruled based on the decision of the Hon'ble Apex Court in **B.Varadha Rao v. State of Karnataka** (AIR 1987 SC 287), that an administrative action should be just and fair. If the exercise of power was based on extraneous consideration for achieving an alien purpose or an oblique motive, it would amount to mala fide and colourable exercise of power.

17. Learned counsel for applicant expanded her reliance on citations during the final hearing through a compilation of judgments that included a decision of the Central Administrative Tribunal, Principal Bench, Delhi in O.A. No.2715/2014 where the applicant had allegedly misbehaved with his colleagues including the Head of Department and was suspended, which was later revoked and meanwhile, he had been transferred to work at a station where the specialization required was in an altogether different discipline. It was held that although he had not been transferred even over the last 20 years, that as held by the

Hon'ble Apex Court in P.K.Chinnaswamy v. Government of Tamil Nadu and Ors., a public servant should be given posting and work commensurate with his status. A public officer is a trustee and the respondent government should give the appellant a proper posting and extract work from him. The Tribunal held that the transfer orders had been passed absolutely for extraneous reasons and not to serve any public interest or to meet any exigency of service. It is nothing but a punitive order. Learned counsel again referred to the case decided by the Hon'ble High Court of Gauhati in **Andrew Banrilang Umdor** (supra), where the Court noted the decision of the Apex Court in **A.K.Kraipak v. Union of India**, (AIR 1970 SC 150), that the distinction between quasi-judicial and administrative functions has been gradually obliterated. The Hon'ble Apex Court had ruled :

"The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of

acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power".

18. The Judgment of the Gauhati High Court also noticed the decision of the Apex Court in **Swadeshi Cotton Mills Co. Ltd. v. Union of India** (1994) Supp.2 SCC 563), which held :-

" It cannot be laid down as a general proposition that whenever a statute confers a power on an administrative authority and makes the exercise of that power conditional on the formation of an opinion by that authority in regard to the existence of an immediacy, its opinion in regard to that preliminary fact is not open to judicial scrutiny at all. While it may be conceded that an element of subjectivity is always involved in the formation of such an opinion, the existence of the circumstances from which the inference constituting the opinion, as the sine qua non for action, are to be drawn, must be demonstrable, and the existence of such "circumstances", if

questioned, must be proved at least *prima facie*".

19. The Court also noted a decision of **Sherao Nagurao v. State of Maharashtra and Ors.** (1989 SLR 328), where it was held that a transfer is *mala fide* when it is made not for professed purpose such as in normal course or in public or administrative interest or in exigencies of service but for other purpose. Also, the decision of the Hon'ble Apex Court in **E.P.Royappa v. State of Tamil Nadu** (AIR 1974 SC 555), wherein it was held that a transfer made to accommodate someone for undisclosed reasons has to be termed as *malafide*. The Court also noted the view of the Hon'ble Apex Court in **Sarvesh Kumar Awasthi v. U.P.Jal Nigam and Ors.** (supra), which held :

"The above decisions make it amply clear that an order of transfer of an employee cannot be made without valid reasons. In such view of the matter, I have no hesitation to answer the question raised by the learned Counsel for the respondents in the affirmative and to say that an order of transfer even though in the nature of administrative order must be supported by valid reasons".

20. While the Hon'ble Court did not agree that the allegation of mala fide made by the appellant had to be specifically denied in the counter filed by the respondents, it held that the impugned transfer order passed in that case is unsupported by any reason to show that it was necessitated by exigency of service or public interest and hence termed the order as mala fide.

21. Learned counsel also relied on the decision of the Hon'ble High Court of Andhra Pradesh in **Smt.K.Prabhavathi and Ors. vs The Deputy Divisional Manager**, (1995 (2) ALT 716), which noted certain judgments before recording its observations. The Court noted the decision of the Hon'ble Supreme Court in **B.Varadha Rao v. State of Karnataka** (supra) that transfer is an incidence of service, and an order of transfer not resulting in alteration of any conditions of service to the disadvantage of the employee, was not open to challenge, but observed that the policy of transfer should be reasonable and fair and should apply to everybody equally. Further,

in **Shilpi Bose v. State of Bihar**, AIR 1991 SC 532, the Apex Court held :

"In our opinion, the Courts should not interfere with transfer orders which are 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."

After referring to a few other judgments, the Court summarized their observations as :

"21. What emerges from the aforementioned decisions of the Apex Court and the High Courts is that transfer is an incidence of service and a managerial function. An employee has no right to be posted at a particular place, if the post held by him is a transferable post. So long as the transfer policy is reasonable, fair and is applicable equally to all it is not open to challenge. The Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless they are made in violation of any mandatory statutory rule or they are tainted by vice of mala fide or they are made without jurisdiction. Even where executive instructions are violated Courts ordinarily shall not interfere with the transfer orders. If a transfer of an employee results in any hardship to him, even then it is not a reason for the Courts to interfere and such employee has to approach higher ups in the administration seeking relief. However, the Courts can interfere where a transfer order is effected in violation of guidelines resulting in

arbitrariness and unreasonable-ness. What is arbitrary and unreasonable is relative in terms and answer to this question should be found having regard to the facts and circumstances of each case. No hard and fast rule can be laid down. It is true that legally speaking a transfer order does not violate any of the legal rights of an employee. But, at the same time, the Court cannot forget to note that sometimes, a transfer order may result in great hardship, inconvenience both to the concerned employee and members of his family. Transfer in a given case can uproot the family of an employee and subject him and other members of his family to untold miseries and hardships. Be that as it may, the settled position in law is that an individual interest should yield to public interest. If public interest requires that an employee should be transferred from the present place to another place then whatever may be the grievance or hardship of such an employee, the public interest should be protected by upholding the validity of such transfer."

22. However, the Court then proceeded to examine the transfer orders in the context of the employees of the Bank in which the appellants were working and who had been redeployed as per the requirement of the Bank. It observed :

".....Added to this it should be noted that family life of an employee has definitely a bearing on the kind of service such employee renders to the

public administration... It is needless to state that the Courts including the Apex Court repeatedly held that it is always proper to permit the spouses to live together if the interest of the public administration does not suffer. In **Bank of India v. Jagjit Singh Mehta**, the Supreme Court held that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different without any detriment to the administrative needs.... In this connection the decision of the Apex Court in **Director of School Education v. O.Karuppa Thevan, 1994 Supp. (2) SCC 666** may be noted. In that case the transfer of an employee during mid academic term was considered by the Court and the Court found that there was no urgency for such transfer and in that view of the matter it restrained the employer from giving effect to the impugned transfer till the end of the academic year".

With regard to these aspects, the Hon'ble Court found that bank management had not placed any acceptable material to show that the impugned transfer orders were unavoidable and held that they suffer from the vice of unreasonableness and arbitrariness.

23. In the case of **Indian Council of Agricultural Research and Ors. v. Sanjeev Kumar Tyagi and Ors.** (W.P. (C) 7079/2012 dt. 8.4.2013 – Delhi High Court), decided by Hon'ble High

Court of Delhi, wherein the petitioner, a Doctor of Science (D.Sc.), had been appointed for the discipline of Chemical Engineering and had been posted by transfer to work in a discipline of Agricultural Chemicals citing administrative exigencies. The Court noted while passing suitable directions that :-

"It is in this context we need to highlight that pertaining to scientists, the traditional theory of exigencies of service, which inherently applies to administrative functioning, may strictly not be applicable. It is not a mechanist exercise to see that the post to which a scientist is sent on transfer is equivalent. The exercise has to primarily focus on the subject expertise of the scientist and whether compatible research facilities are available at the place where the scientist is posted. What use would it be to send a nuclear physicist to a missile centre?

24. To sum up the applicant's case law pleadings, the decision cited set out the basis on which Courts or Tribunals may intervene, the need for administrative action to be just and fair and record valid reasons including the facts of administrative exigencies or public interest. The work at place of transfer needs also to be in line with the expertise of the

person transferred.

25. During the final hearing respondents relied on three judgments. They cited a decision of Hon'ble High Court of Allahabad in **Dr.Krishna Chandra Dubey v. Union of India (ICAR)**, decided on 5.9.2005 by Allahabad High Court, where the scientist had been transferred in mid-academic session and it was argued on his behalf that he had already served in a backward area and that it was not in public interest, but only to accommodate another Scientist at his earlier location. This judgment summarized a catena of decisions by the Hon'ble Apex Court by which it is held that 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. Further, that an employee holding a transferable post cannot claim any vested right to work at a particular place as the transfer order does not affect any of his legal rights. The Court noted the decision of Hon'ble Apex Court in **Union of India v. H.N.Kirtania**, (AIR 1989 SC 1774) that :

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or grounds of malafide."

26. 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** (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. 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. There is no dispute that the respondent is liable to transfer anywhere in India. It is not the case of the respondent that the order of his transfer was vitiated by mala fides on the part of the authority making the order, though the Tribunal says so, merely because certain guidelines issued by the Central Government were not followed." For this decision, the Court noted the previous decision taken in **Bank of India v. Jagjit Singh Mehta** [1992] 1 S.C.C.306

"... they cannot, as of right, claim to be relieved of the ordinary incidents of all-India service and avoid transfer to a different place on the ground that-the spouses thereby would-be posted at different places. ... No doubt the guidelines requires the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not

consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

27. The judgment does not also say that the Court or the Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be characterised as mala fide for that reason. To reiterate, the order of transfer can be questioned in a court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions.

28. Again in **State Bank of India v. Anjan Sanyal**, (Appeal (Civil) 226/1997 dt. 12.4.2001), the Apex Court held :

"An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer

or that the authorities, who issued the order, had not the competence to pass the order."

29. Again with regard to relieving orders, the Hon'ble Apex Court held in **Rhone-Poulenc (India) Ltd. v. State of U.P.**, (AIR 2000 SC 3182), that :

"the mere fact that after the order of transfer had been issued and when Respondent 3 had failed to report for duty, he was also asked by the Corporate Manager, who was competent to order his transfer, to join the duties at Kanpur will not validate the order of transfer issued by an authority not competent to do so."

30. In **Gujarat Electricity Board & Anr. v. Atmaram Sungomal Poshani**, (AIR 1989 SC 1433), the Hon'ble Apex Court observed that :

"that an employee fails to join at the transferred place, he exposes himself to the disciplinary proceedings for disobedience of the order. The employee cannot avoid the compliance of the transfer order. In **Addisons Paints & Chemicals Ltd. v. Workman**, AIR 2001 SC 436, a similar view has been reiterated and it has been held therein that refusal to report for duty upon transfer amounts to misconduct. Even if the transfer order is bad for some reason, the employee must ensure compliance of the order first and then raise the issue with the employer for redressal of his grievance."

31. In **State of U.P. v. Gobardhan Lal**,

(2004) 11 SCC 405, the Apex Court observed that :

"that transfer is prerogative of the authorities concerned and the 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."

In this case, the Court went on to say "This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interferred 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."

32. In the case of **State of Madhya Pradesh v. S.S.Kaurav**, (AIR 1995 SC 1056), the Apex Court held that :

"that it is not permissible for the Court to go into the relative hardship of the employee. It is for the administration to consider the facts of

a given case and mitigate the real hardship in the interest of good and efficient administration."

33. On the issue of mala fide or "*malus animus*" the Hon'ble Supreme Court held in **Tara Chand Khatri v. Municipal Corporation of Delhi and Ors.** (AIR 1977 SC 567) , that :

"the High Court would be justified in refusing to carry on investigation into the allegation of mala fides, if necessary particulars of the charge making out a *prima facie* case are not given in the writ petition and burden of establishing mala fide lies very heavily on the person who alleges it and there must be sufficient material to establish *malus animus*."

34. In **E.P.Royappa v. State of Tamil Nadu and Anr.** (supra), the Hon'ble Apex Court also held :

"Secondly, we must not also over-look that the burden of establishing mala fides is very heavy on the person who alleges it... The Court would therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other, not because of any special status... but because otherwise, functioning effectively would

become difficult in a democracy."

35. In **M. Sankaranarayanan, IAS v. State of Karnataka and Ors.** (AIR 1993 SC 763), the Hon'ble Apex Court observed :

"that the Court may "draw a reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture."

36. However, in **N.K.Singh v. Union of India**, (AIR 1995 SC 423), the Hon'ble Apex Court held that :

"the interference of mala fides should be drawn by reading in between the lines and taking into account the attendant circumstances".

37. The Hon'ble Apex Court also examined issue of bias and mala fide in **State of Punjab v. V.K.Khanna and Ors.**, (Appeal (Civil) 6963/2000 dt. 30.11.2000 and observed that :

"One redeeming feature in the matter of attributing bias or malice and is now well settled that mere general statements will not be sufficient for the purpose of indication of ill will. There must be cogent evidence available on record to come to the conclusion as to whether in fact, there was existing a bias or a mala fide move which results in the miscarriage of justice... In

almost all legal inquiries, 'intention as distinguished from motive is the all-important factor' and in common parlance a malicious act stands equated with an intentional act without just cause or excuse."

38. As also in the case of **Kiran Gupta and Ors. v. State of U.P. and Ors.** (AIR 2000 SC 3299) and **Netai Bag and Ors. v. State of W.B. and Ors.** (AIR 2000 SC 3313), it was held that :

"There has to be very strong and convincing evidence to establish the allegations of mala fides specifically alleged in the petition as the same cannot merely be presumed. The presumption is in favour of the bona fides of the order unless contradicted by acceptable material."

39. The respondents also relied on the decision of the CAT, Principal Bench in O.A. No.2633/2010 - **Sh. Arvind v. ICAR and Ors.**, where he had been transferred from ICAR Hqrs. To CSWRI, Avikanagar in Rajasthan and to which he had alleged violation of guidelines, lack of public interest, mala fide and that spouse was working in Delhi. The order quotes the decision of the Hon'ble Supreme Court in **State of U.P. v. Siya Ram and Anr.**, (AIR 2004 SC 4121), as follows :

"that the question whether a transfer was made in the interest of public service is essentially a factual matter left primarily to the executive authorities to decide; unless an order is shown to be outcome of a mala fide exercised or in violation of statutory provisions, the Courts should not ordinarily intervene."

The order also refers to the decision of the Hon'ble Apex Court in **Union of India Vs. Janardhan Debanath**, (2004) 4 SCC 245, in which it was held that :

"transfer of an employee on account of his inefficiency or misbehaviour will not be treated as a punitive measure."

40. The respondents also depend on the decision of the Hon'ble Bombay High Court on an appeal from CAT decision of this Tribunal by an Administrative Staff Member of CIRCOT in **Acting Director, CIRCOT v. Koppaka Parleshwar and Ors.**, (W.P. No.6082/2016 21.6.2017), where the petitioner who was an AAO transferred to Nagpur, while the AAO at Nagpur was posted in another available vacancy at Mumbai. In that case, the applicant did not allege mala fides, but argued that there was no need for him to be transferred especially to make way for the incoming person

from Nagpur. The Court held that the petitioner had been working in Mumbai for 32 years and the AAO at Nagpur had been working at Nagpur for 31 years and that mere allegation that the respondent employee from Nagpur had been transferred from Nagpur to Mumbai at his request and the petitioner had been transferred to Nagpur cannot yield the conclusion that the transfer order was passed to accommodate the respondent Nagpur employee.

41. To sum up the respondent's case law pleadings, the decisions cited hold that Courts and Tribunals should not lightly intervene in transfers on administrative grounds or public interest unless strong and pressing grounds are found. There are no legally enforceable rights involved nor any vested right to stay in the place and resist transfer and it is the prerogative of the employer to decide all aspects relevant to the transfer. Once a transfer order is passed, the employee is bound to comply, report at the transferred station and then represent his problems as failure would

amount to disobedience. Both the aspects of hardship in individual cases or for employed spouses to be posted together are to be considered along with the exigencies of administration, administrative needs, and claims of other employees. Finally, where mala fide is alleged, the burden is heavily on the person alleging it and must be capable of being inferred from a strong factual matrix that is not based on insinuation, surmise or conjecture, and must be easily inferred by reading between the lines because the presumption is in favour of the order's bona fides. Punitive transfers are bad in law but transfers on grounds of inefficiency or misbehaviour are not punitive.

42. The aspect of administrative exigencies is frequently argued by the employers to support the orders of transfer especially in the context where the guidelines set tenures or other conditions favouring retention of the employee. This term in the context of routine transfers has been previously examined by the Allahabad bench of this Tribunal in **Sukhbir Singh v. UOI &**

Ors in OA 1413-1417/2012 decided on 16.5.2014

which noted:-

"Thus, from the above authentic definitions, it is clear that an administrative exigency is a very pressing necessity, a critical necessity and a situation of great urgency. Thus, normal situations or circumstances do not come under the purview of "administrative exigency". If the situation is a "routine situation" or a "normal prevent situation", then the contention of administrative exigency/requirement etc. has to be rejected. Further, to invoke the defence of administrative exigency/requirement or its various synonyms like in the interest of the organization or in public interest, the "pressing need", or the "critical situation" etc must be demonstrated in the pleadings of the respondents duly supported by the office files on the basis of which such counter affidavits are prepared. Thus no summarize, to advance the argument of administrative exigency or its various synonyms as noticed above, the pressing need, critical situation etc. must have been considered by the Competent Authority in the files and also must have been demonstrated in the counter affidavit. Conversely, in the absence of any pleadings containing details of pressing needs, urgent or difficult situation necessitating a deviation from the professed norms, the defence of administrative exigency and its various synonyms would not be available to the respondent."

43. At the cost of some repetition, we observe that 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)]:, **Airport Authority of India v. Rajeev Ratan Pandey**, JT 2009 (10) SC 472, and **Rajendra Singh and Anr. v. State of UP and others**, 2010 1 SLR 632.

44. 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 cab function in such manner," as noted in **Rajendra Singh & Anr v. State of Uttar Pradesh & Ors** (2010) supra. As was also held in **Shilpi Bose** (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."

45. 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."

46. In **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan**, (2001) 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** (supra), **KVS v. Damodar Prasad Pandey** (supra) and **N.K. Singh** (supra). In the decision on **Gobardhan Lal** (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."

47. We have heard both the learned counsels and have carefully considered the facts and circumstances of the case, law points and contentions by parties in the case.

48. At the outset, we may examine the relevance and need for impleading Respondents 1 & 4 in this application. Respondent 1, the ICAR Council, had issued the Transfer Guidelines

No. TS 19(11)/2016-Estt.IV dated 6.9.2014 with the approval of its Governing Body recorded in its meeting held on 29.6.2016. Neither the guidelines nor the authority of the Council have been challenged in this application. Therefore, Respondent 1 is clearly not a necessary party even in a formal nature. Further, Respondent 4 has been impleaded merely because he issued the transfer orders by the orders of Respondent 2/3 based on the recommendations of the Transfer Committee. He had not exercised any authority but simply acted upon directions received by him. Therefore, Respondent 4 is also a case of mis-joinder of parties and is, accordingly, deleted.

49. The ICAR, which is the controlling institution for CIRCOT had issued instructions in their Ref no. TS 19(11)/2016-Estt.IV dated 06.09.2016 directing the system and method to be adopted by each institution for the transfer of administrative and technical employees in order to ensure better administration. In respect of technical employees, every Institute should have

one Transfer Committee, headed by the head of the Administration/Joint Director/HOD as Chairman for considering/recommending intra institutional transfer. Transfer request/ routine transfers may be effected once in a year, preferably in the month of March. In accordance with this instruction, the Transfer Committee was established by CIRCOT in their order no. No.A.1/4/Administration/Transfer-Scientific/16-17 dated 22.05.2017 consisting of Respondent no.2/3 as Chairman and as members HOD In charge MPD and HOD In charge QEID, Asst. Chief Technical officer, AFAO, AAO, and Admn-I (Member Secretary). This Committee was entrusted with the task in respect of both administrative and technical staff. Since this Committee was set up, more than 8 months after issue of guidelines by the ICAR, clearly there was no haste as alleged by applicant. On the face of it, there is no apparent error in the formation of this Committee where the first three are clearly Scientists. The applicant argued that Dr. S. K. Chattopadhyay and Dr Sujata Saxena who are Principal Scientists

should also be accommodated but this is clearly a mysterious stand taken by applicant. In this case, it turns out from papers annexed that the first was her head in MPD who refused to relieve her and wrote a strong letter to Respondent no. 2&3 while the latter is her present head. It is also inferred that both are senior to the Director which may be a rich area of conflict. It is clearly, well within the scope of the Director to decide how to form this Transfer Committee and to conduct its proceedings in an orderly and smooth manner, especially since its decisions will eventually be subject to judicial review if they turn out to be perverse. The Transfer Committee has jurisdiction and competence to assess the need for and the nature of staff at different units and it is not open to this Tribunal to enter into an examination of their decisions specially when they are arrived at by discussion within the Committee and a consensus obtained. The figures shown by applicant at A-16 and her claims that samples receipt at Guntur are falling low with a machine

under repair suggests the need to strengthen that unit. In fact, 38% of the samples are handled by the Mumbai office while 4% of the samples are handled in CIRCOT, Guntur (2016-17) but with only 1.5% of the technical staff in CIRCOT. Plainly, the argument of the applicant on these aspects have no merit and her argument that Guntur unit does not need more staff is presumptuous in the face of these facts. The fact that only overall strength is sanctioned for CIRCOT and hitherto there was no intra-Institutional transfer mechanism only justifies the need and importance of the mechanism now established as the Transfer Committee. As the system emerges from the previous vacuum with all staff sitting in the headquarters, the introduction of this mechanism will doubtless cause hardship but as settled in **Shilpi Bose** (supra), individual interest must give way to public interest which is a perfectly valid reason for transfer unless other circumstances exist.

50. The applicant argues that she has some

medical issues of back pain, acidity and menopausal issues, but these are hardly serious by any standard and the cities of Guntur and Vijayawada are premier towns of Andhra Pradesh State where she can expect adequate medical assistance.

51. The applicant has argued that she is a very senior Technical Officer and she has been working in the field of mechanical processing of cotton and blended yarn for 23 years and during the last one year, in the chemical processing division. She also claims that her work led to a number of publications and presentations. In contrast, she claims that the quality evaluation of cotton uses HVI instrument for which she has not been trained. At the outset, we need to refer to the job description of a Technical Officer which states very clearly that they are posted in the lab and other places to assist the Scientists. This cannot become the basis for exaggerated claims for publications and presentations. The reply received by email to her representation also points to the fact

that Technical Officers are trained at the very beginning in all areas and if she felt that she was not adequately ready for using the HVI instrument, she could have submitted a request to the Director instead of refusing to do the job that rests with Technical Officer.

52. She has mentioned that the Director did not seek her advise or assistance in matters regarding the Institute nor did he prefer her for any Institutional Committees. However, in a large Institute, it is left to the Director concerned on whom he consults to arrive at an opinion or to take a decision and it is somewhat presumptuous for the applicant to assume that all wisdom resides with her. Such an attitude itself suggests that there exists a seed for unnecessary tension and conflict within the Institute. The applicant has alleged malice by referring to the way in which she was served with a combined transfer and relieving order which effectively denied her 30 days preparation time, attempted seizure of her computer which led her to file a police complaint at Matunga

police station on 5.7.2017, the day after her transfer, and that Respondent 2/3 was trying to spoil her APAR for 2014-15. She has also alleged regional bias on the basis that she and her two friends who are also applicants in separate applications being heard together, are Malayalis and have been targeted. It is settled law as discussed in foregoing paragraphs 33-38 and 41 that allegations of malice and bias need to be supported with substantial evidence and not with the flimsy suggestions, surmises and baseless allegations that form part of this application.

53. The applicant has also alleged sexual harassment by referring to the sexual harassment case filed by her colleague (OA No.424/2017) and that this case is pending before the LCC. She has attributed a perverted and sick mindset to the respondent no.3 for which also she has not given any worthwhile evidence. Here she alleges that a camera was installed in the canteen where these three women colleagues meet during lunch time. She alleges that this was fitted to

scrutinize and observe the applicants and is an act of voyeurism. Fixing a camera in a public place is a job of the administration headed by the Director and if it is so fixed, it serves as a watch dog over illegal activities, including the prevention of sexual harassment. If the applicant felt that she was being observed, all that she has to do was to shift to another table along with her colleagues instead of making allegations of this kind.

54. In the result, we are sorry to observe that this application and papers filed subsequently by the applicant are filled with wanton and baseless allegations of voyeurism, perversion, sick mindset and sexual harassment which are grave issues that need to be handled and supported with substantial evidence rather than liberally pepper the submissions with these words as a substitute for evidence.

55. In the circumstances, we find no basis for this Tribunal to intervene in the said transfer orders. The interim orders granted earlier are withdrawn and the O.A. is

accordingly dismissed with no order as to costs.

(R.Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J)

Gagan/B.