

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

ORIGINAL APPLICATION NO. 424/2017

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.Binu Sunil, Wife of Mr.M.G.Sunil Kumar, Age 47 years, Occupation : Sr. Technical Officer, Working at Central Institute for Research on Cotton Technology (ICAR), Adenwala Road, Near Five Garden Matunga (East), Mumbai-400019 and residing at 201 Nalanda, RCP Employees CHS Ltd., Plot No.24/25, Sector - 15, Vashi Navi Mumbai-400703.**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), Krishi Bhavan, 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 application has been filed opposing impugned orders issued on 4/7/2017 transferring the applicant aged 47 years from the yarn testing section of the Quality Evaluation and Improvement Division (QEID) at Mumbai head office of ICAR-CIRCOT to the Quality Evaluation Unit (QEÜ) at Sirsa, Haryana. Her transfer is stated to be in the public interest and with the approval of the competent authority.

2. Respondents had filed a caveat application no.24/2017 in this matter on 5.7.2017 and when the case was heard on 11.7.2017, both applicant and respondents who had filed their reply, were heard and interim relief was granted which continues to date. The respondents filed a WP against the interim orders, it is informed to the Court on 22.1.2018, that the Hon'ble High Court has, on 14.11.2017 requested this Tribunal to

dispose the OA by 31.1.2018. These orders are, however, not received either from respondents or officially.

3. The reliefs sought by the applicant are:

"8.1) The 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 order dated 04.07.2017 with all consequential benefits.

8.2) The 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 though private sector. It has facilities at Mumbai headquarters, GTC Nagpur, and Quality Evaluation Units (QEUs) at

Coimbatore, Dharwad (Karnataka), Guntur (AP), Sirsa (Haryana), and Surat. 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 Senior Technical Officer who joined as Technical Assistant in 1993 at QEU, Sirsa, Haryana, got transferred to Mumbai in 1995 and has then risen in the ranks to her present position at Mumbai as Senior Technical Officer in the Fibre Testing (FT) and recently, in the Yarn Testing section (YT) of the Quality Evaluation and Improvement Division (QEID). 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. 17 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.

7. The applicant claims to have an excellent service record over the last 24 years and has served in fibre testing and yarn testing divisions. She has argued that the transfer orders violate the guidelines for the following reasons:

- a) CIRCOT has no mechanisms of routine transfers of technical staff between headquarters and field units.
- b) The transfer committee has 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.Chattpadhyay, 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) That there is no specific sanctioned post at Sirsa for a Senior Technical Officer such as herself in her field of experience and therefore, the transfer orders are arbitrary and mala fide. She also mentions that there is no such sanctioned strength of technical staff in any of the CIRCOT technical units.

d) no reasons have been given in the transfer orders except to state that they are in the public interest. She claims that there

is no need for an additional person at Sirsa.

e) no one has still been posted in her place.

f) the orders include both transfer and relief and provide no opportunity for representation or for joining time as permitted in the guidelines.

g) She claims that as per rules, senior persons should be transferred first and that she has been selectively transferred

h) The transfer orders have been issued in July in mid-academic year, whereas the guidelines require orders to be issued in the month of March.

i) her husband is working in a private firm at Mumbai and his job is not transferable. As per guidelines, husband and wife should be located together in the same town or nearby, according to her.

j) She has undergone two major surgeries for heart and spine and she claims to be under continuous treatment since the last 14

years with a cardiologist and orthopaedician and requires continuous monitoring of health. She also claims that her son is studying in college and is suffering from severe asthma and dermatitis for which he needs specialist treatment.

k) that her representation against transfer was given on 5.7.2017 and did not receive any reply till this OA on 7.7.2017.

l) She alleges malice and bias in the transfer orders for the above reasons and also because :

i) that she had filed an OA for sexual harassment before this tribunal which had heard the matter and in the midst of these proceedings, respondent 3 sanctioned child care leave to her but for initiating these legal proceedings, respondent 3 was annoyed with her and biased. The final orders in this OA were perused and it was seen from her original application that the applicant had alleged sexual harassment attributed to the

misogynist attitude of Respondent 3. Since the primary reliefs were settled, this additional relief could not be heard and applicant was advised to follow the route prescribed in the CCS Rules first.

ii) on the next day after the transfer order, when she went to make her representation, colleagues who she says, acted on behalf of respondent 3, allegedly intimidated her and asked her about her personal computer which they wanted to take possession from her. On the next day, the Director also called the police to the office which was an act of intimidation;

iii) both transfer order and relieving order are contained in the same orders and do not give 30 days time as prescribed in the guidelines for relief;

iv) that Respondent 2/3 had also downgraded her APAR which she also attributes to his malice.

v) that the transfer made after 23

years of service in Mumbai was itself mala fide;

vi) Applicant also alleges that respondent 2/3 had established a camera at the canteen above the table where the applicant and her friends, all of whom have been transferred, and was scrutinising and observing them. By this, she alleges that respondent 3 was indulging in voyeurism.

vii) she also alleges from this, that respondent 2/3 had a strong regional bias against the three of them who were all Malayalam speakers.

viii) that respondent 3 had given cashless awards to all employees who had made contributions but she did not receive any;

ix) that respondent 3 was harassing other women employees who had also filed complaints of sexual harassment before this tribunal by way of OA;

x) that respondent 3 was adopting different methods to harass women employees at

the workplace;

8. Respondents filed a reply on the first day of hearing on 11/7/2017 stating that the Transfer Committee had been duly constituted and her transfer had been decided by consensus. They denied any personal animus or enmity to the applicant. With reference to the availability of posts at different stations, they state that posts of sanction for CIRCOT and employees are deployed as needed for which Respondent 2/3, the Director, is fully competent to deploy the services of technical staff as per exigencies of work. They point out that the applicant has been working at Mumbai since 1995 and she cannot raise objections to a transfer which is an incident of service. It is for Respondent No. 2/3, the Director, to decide on the requirement of deployment of staff at different places and that there are 20 Sr. Technical Officers in Mumbai to do the work required. They point out to the terms and conditions of service which the applicant

consented while joining which was to serve anywhere in India. They assert that more than 15 employees have been transferred over the last 2 months and except the applicant and 3 other employees transferred by orders dated 4/7/2017, all other employees have joined at their respective transfer stations. They contest the scope for this Tribunal to intervene in these lawful transfer orders which are done based on administrative needs.

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 2 to affirm for Respondent 1.

11. In her rejoinder, applicant revisits the issues she raised earlier. She argues that the transfer is not a routine transfer. CIRCOT has no mechanism for routine transfers of employees from headquarters to its regional units, according to her. She encloses a

statement of staff strength of CIRCOT which shows that there is no specific staff strength for each station and therefore, transfer becomes a potent weapon to inflict injury on subordinates. She also argues that for all cases of redeployment, transfer, diversion, adjustment, upgradation, redesignation, of posts, prior approval of Ministry of Finance is required in accordance with the guidelines of Government of India. She claims that she has worked on various projects in yarn and fibre testing and has gained expertise and that there is no need for her to be posted at Sirsa where there is already a team of one Chief Technical Officer and a Senior Technical Officer, the latter being senior to her. She argues that fibre testing work is steadily decreasing at Sirsa whereas there is enough work in this area at Mumbai where her potential can be fully utilised. She denies the claim of respondent that more than 15 employees have been transferred as a lie and that only one

technical officer and one supporting staff have been moved. She argues that the orders have been charged with malice and bias and do not strictly follow the guidelines. Based on decisions in **Sarvesh Kumar Awasthi v. UP Jal Nigam & Ors.** (2003(11) SCC 740) and **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey**, (2004) 12 SCC 299) of the Apex Court, she alleges that since the respondent have violated the transfer rules, selected employees for transfer by pick-and-choose method in order to inflict injury without any exigency of work and without any public interest, this Tribunal has a duty to intervene.

12. The Annexures filed by her shows that as at 31/3/2016, CIRCOT had 266 sanctioned posts with 167 staff in position and 99 vacancies distributed as Scientific 25 (25), Technical 72 (40), Administrative 29 (18), and Supporting Staff 41 (16). The details of paid samples tested and revenue generated are listed in Annexure 10 by the applicant which shows

that CIRCOT tested 10,764 samples with a revenue of ₹48.22 lakhs. Of this, Mumbai with 72 technical staff tested 4,122 (38%) samples and earned ₹35.83 lakhs while Sirsa tested 815 (7.5%) samples with two staffers (3%) including the head and earned ₹2.23 lakhs.

13. Applicant also filed an additional affidavit through an MA No.51/2018 by which she claimed that respondent 3 had committed a series of acts against her and other two female employees which could be categorised as sexual harassment for which she had filed a complaint later to the filing of this application, with the Local Complaints Committee (LCC) and they had replied to her on 15/1/2018 of their plans to schedule hearings on the matter. In this affidavit too, she asserts that there is no need for posting her to Sirsa where the unit consists of only 2 employees. She argues that this is the case for the other two employees also who have filed OAs that are being heard together. She argues that in the face of her

complaint, this Tribunal should adjourn this hearing until the LCC completes its process. In this MA No.51/2018 and a further MA No.Nil more issues have been raised that are relevant as different causes of action and may not be relevant to arriving at an understanding of the facts and circumstances relevant to this transfer order and to that extent, those applications are denied admission.

14. 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.

15. 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** (supra) 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 inference that where operating guidelines or rules are in force and transfer is made in violation of such guidelines, interference in exercise of writ jurisdiction becomes 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.** (supra), 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.

16. 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 but 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".

17. 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) has held that :-

" 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*".

18. 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".

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.

19. 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 unreasonableness.

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."

20. 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.

21. 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) 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?

22. 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.

23. 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."

24. 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 SCC 306 that :

"... 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."

25. 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.

26. 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."

27. 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."

28. 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."

29. 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."

30. 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."

31. 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*."

32. In **E.P.Royappa v. State of Tamil Nadu**

and Anr. (supra), the Hon'ble Apex Court also held :

"Secondly, we must not also overlook 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."

33. 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."

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

"the inference of mala fides should be drawn by reading in between the

lines and taking into account the attendant circumstances".

35. 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."

36. 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."

37. 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."

38. 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.

39. 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.

40. 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 to 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."

41. 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 (supra), **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 & Anr. v. State of UP and others**, 2010 1 SLR 632.

42. 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) that :

"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."

43. 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."

44. 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** (2004) and **N.K. Singh** (2004) 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."

45. 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.

46. 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 are 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 recommendation 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 misjoinder of parties and is, accordingly, deleted.

47. 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. This is clearly designed as a working mechanism on the lines of the Apex Court mandated mechanism in the ICAR. 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, preferable in the month of March. In accordance with this instruction, the Transfer Committee was established by CIRCOT in their orders No.A.1/4/ Administration/Transfer-Scientific/16-17 dated 22.05.2017 consisting of respondent no.2/3 (HOD Administration) as Chairman and as members, HOD (In-charge) MPD and HOD (In-charge) QEID, senior Administrative Officer, Asst. Chief

Technical officer, AFAO and AAO 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 and the Chairman is also head of Administration for which there is no specific bar in the guidelines. The applicant argues that Dr. S. K. Chattopadhyay, Principal Scientist (but not HOD) and Dr Sujata Saxena, Principal Scientist and HOD who are the seniormost in the Institute should also be accommodated but this is clearly a mysterious stand taken by applicant. Perhaps she implies that the Director is junior to these two persons and should not have been overlooked by ICAR for appointment as Director. It is legally well within the scope of the Director's power

as delegated in the Guidelines, 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-12 and her claims that samples receipt at Sirsa are falling every year suggests the need to strengthen that unit. In fact, 38% of samples are handled by the Mumbai office, 7.5% of the samples are handled in CIRCOT, Sirsa (2016-17) but with only four percent of the 72 technical staff deployed in CIRCOT. Plainly, the argument of applicant on these aspects have no merit and her argument that Sirsa 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.

48. The applicant argues that no one has been posted in her place but that is evidently an administrative domain given the large number of vacancies (35%) in the technical cadre. A reference to the job description of a technical officer supra shows that they assist scientists in the laboratory investigations. It is also best left to the Director and his HODs to

consult whom they consider competent and the applicant can have no grievance in this matter.

49. The applicant questions the transfer order for combining transfer and relief which is an administrative issue. The guidelines propose a maximum of 30 days preparation time beyond which, presumably, travel time and joining time would be eligible. If the applicant wanted time, she should have applied with good reasons rather than question the combined orders which are not irregular although they may be considered summary in nature. As pointed out by respondents, the Transfer Committee and Director have full authority on whom to deploy and it need not be the seniormost technical officers. The applicant has raised the issue of transfer in mid-academic year but has not explained how this affected her since this requirement is usually only school-going children in X/XII classes and not as in the case of applicant. With regard to her husband's station, the

guidelines make no provision but the guidelines of DoP&T provide for this consideration if the other spouse is working in a Govt or PSU at the previous station but this is not the case for the applicant whose husband is in a private firm. Even these guidelines are subject to administrative feasibility and exigencies for which the law has been settled in the **S.L.Abbas case (supra)**.

50. The applicant has claimed that there is no specific sanctioned post at Sirsa for a Senior Technical Officer, such as herself in her field of experience. However, her own description of her work indicates that she has been engaged in Fibre Testing which is also the work done at Sirsa. Therefore, there is no obvious misfit in the arrangements proposed by her transfer. With regard to availability of Technical Staff of different seniority, all the Technical Staff have been assigned work to assist the Scientists in this Institution and they do this in various ways. Her seniority is

reflected in the designation and higher pay scales. However, that does not mean that the Institution cannot deploy officers according to its requirements and therefore, the excuse offered by the applicant is untenable.

51. The applicant has claimed medical issues in respect of herself and refers to an operation of disc bulge done in 2011 and makes claims about heart surgery, but has not given any evidence other than recent prescription of New Bombay Hospital of February, 2017 which shows that she suffers from diabetes, hypertension and hypothyroidism and is on treatment by tablets. These are normal health conditions that come with age and cannot be considered to be critical conditions for seeking exemption from transfer.

52. She has made a number of allegations alleging malice and bias against the respondent no.3, on the manner in which her transfer was ordered and served on her, attempted seizure of computer and deletion from the bio-metric

system. These are, no doubt, issues of courtesy. But it is also noted that according to her, the Director called the local police to the office which was an act of intimidation. In the case of another applicant in this batch of three applications, the applicant had herself complained over phone to the Matunga police station and it is perhaps the deep misunderstanding between the applicant and Directors and other office members that brought the police into what is patently a prestigious Research Institution. She has also given other reasons to support her charge of malice including that her transfer was made after a long period of 23 years of service in Mumbai. She also claims that R-3 had given cashless awards to all employees, but did not give her any. These charges do not add up to supporting the charge of malice and bias that is being brought by the applicant against the respondents.

53. Supplementing the charge of malice and

to support it further, the applicant has referred to a previous application made before this Tribunal in 2015 for sexual harassment and for not sanctioning Child Care Leave to her for her son's final school examinations. Even at the initial stages of hearing, the respondents sanctioned the Child Care Leave and the sexual harassment aspect was considered to be an issue of multiple reliefs for which the applicant was asked to make a separate representation to the competent forum which she has apparently filed before the Local Complaints Committee, it is informed. The concerned file was summoned and it was found that the applicant described the respondent no.3 as a misogynist, a woman hater, and the only reason apparent from the application is that he had failed to give her leave as demanded by her. The charge of misogyny and inferred sexual harassments are perhaps the subject of the complaint filed by her. But, considering that the respondent no.3 has spent long years in this Institution

and as ascertained from the website, most of the personal staff and a large number of scientific, administration and technical staff are women, it is inconceivable that such a charge can be made without a shred of evidence as found in this application. The respondent no.3 has risen from the level of Scientist and has been selected as Director which suggests the confidence reposed by the Government in his conduct and work. With regard to the charge that he had fixed a camera in the Canteen, the applicant was at liberty to move to any other table. Fixing a camera in a public place is both the duty of the administration headed by the Director and serves as a protection to women employees and others, and precisely such matters as alleged by the applicant. The settled law is that a person urging bias, mala fide and sexual harassment has to provide concrete evidence and this application provides nothing.

54. In the circumstances, we see no reason

to intervene in these orders. The interim orders granted earlier are hereby withdrawn and the O.A. is dismissed without any order as to costs.

(R.Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J)

B.

