

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.802/2016

Dated This The 5th day of October, 2017

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

Mrs.Malabika Mallick
W/o. Jayanta Mallick,
UDC in APTC Records,
Pune.

R/At :- House No.5/6,
(Type II),
Defence Colony,
Lullanagar,
Pune-411040.

... Applicant

(By Advocate Shri S.M.Vakhare)

Versus.

1. The Union of India, Through
Integrated HQ of MoD (Army),
Addl. Dte. Gen MP-8 (Iof R),
IHQ of MOD (Army, AG's Branch,
RK Puram, West Block-III,
New Delhi-110066.
2. The Commandant/Office-in-Charge,
Records, AIPT & APTC Depot,
Pin-900449,
C/o. 56 APO, Hadapsar,
Pune-411022.
3. The Chief Record/
Commanding Officer,
Lt. Col. C.Chakrabarti, APTC,
Records,
Pune-900449, C/o- 56 APO
Hadapsar,
Pune-411022.

4. Lt.Col. Jitendrakumar,
QM., AIPT, Depot,
Pune, Pin 900449
C/o- 56 APO
Hadapsar,
Pune-411022.

5. The Office Superintendent,
AIPT, Depot,
Pune, Pin 900449
C/o- 56 APO
Hadapsar,
Pune-411022.

....Respondents.

(By Advocate Shri B.K.Ashok Kumar)

Reserved on :- 15.09.2017

Pronounced on :- 05.10.2017

ORDER

Per : R.Vijaykumar, Member (A)

This application was filed on
11.11.2016 seeking the following reliefs :-

"a) This Hon'ble Tribunal may kindly be pleased to Set-a-side the Applicants illegal Transfer Vide Posting/Transfer Order No.A/21009 /P&T/MP 8(I of R)(c) dtd. 5.8.2016 From APTC Records, Pune to Records BEG (K) and allow her to work in the main office i.e. APTC Records, Hadapsar Pune.

b) This Hon'ble Tribunal may kindly be pleased to direct The Respondents to release salary of the Applicant from August 2016 till final decision of the present Original Application.

c) any other orders in the interest of justice may kindly be passed.

(d) Cost of Application be awarded for".

2. The factual matrix of the case is :
The applicant who was posted on compassionate grounds to APTC Records, Pune joined at APTC Records Hadapsar, Pune on 25.4.2009. On 28.11.2014, she complained of harassment by R-3 in two letters dt. 28.11.2014 and 9.5.2015 alleging that R-3 was always finding fault in front of others and was insulting her and making hurtful comments which hurt her self-respect considering her age of 45 years and after having served 27 years. She had also requested to be separated from the office at the earliest. She says that she had complained to the Commandant and Deputy Commandant, but no action was being taken. Both letters were addressed to the Commandant of the APDC Depot through proper channel. She was transferred in the

impugned order No.A/21009/P&T/MP 8(1 of R)
(c) dt. 5.8.2016 with relief on 10.8.2016
from APTC Records to Records BEG (K), Kirkee
Pune, 10 kms. Away, on administrative
grounds. She made representations opposing
her transfer on 8.8.2016, 12.8.2016,
14.9.2016, 17.10.2016 and 26.10.2016 citing
the following grounds :-

- a) No prior notice of transfer.
- b) As only earning member of her family, short notice is financially upsetting.
- c) Both she and her husband were not in good health and transferring from Kirkee to Pune would be tiresome.
- d) That her daughter was a final year M.Com student and who was in a college near her residence and travelling to Kirkee would affect her studies.
- e) She also urged that she is working efficiently.

These letters were addressed to IHQ MoD
(Army), Additional Directorate General MP/
MP-8, R.K.Puram, West Block, New Delhi
through proper channel. She had also

requested to kindly release her medical bills. She received reply on 25.10.2016 directing her to obey the transfer order. She, thereafter, issued notice through Advocate on 26.8.2016 alleging mala fides in the transfer considering the lack of reasons and her previous good performance. She also accused her Supervisor Lt. Col. Chanchal Chakrabarti of abusing her and insulting her in front of others and he and the CRO were both mistreating her. She has complained about non-issue of CGHS card to her and that on 24.8.2016 when her husband went to submit Medical Certificate in her office he was dragged out and the CGHS Card has not yet been issued.

3. In reply to her letter of 5.8.2016 and 8.8.2016, a letter dt.9.8.2016 has been issued from Offg Chief Record Officer to her under copy to the office at New Delhi stating as follows :-

"2. A case was taken up by this est for your posting on account of

your professional inefficiency and its adverse impact on the working environment of this office. Consequently, the same has been approved by Addl Dte Gen MP/MP-8(1 of R) vide letter under reference at Para 1 (a).

3. You are hereby relieved vide Movement Order No.R-2852/POST/ LA (CIV) dated 9.8.2016 (copy att) wef 9.8.2016 (copy att) wef 9.8.2016 (A/N). In case you wish to retain the occupation of Govt accommodation, you may process your application separately for that".

4. She had also applied for medical leave enclosing certificate from a private medical physician for which she was advised to file through the new office where she was posted. On 29.9.2016 she reiterated her request for cancellation of posting order and also requested that she may be allowed to retain her present accommodation for at least one year since her daughter was studying in college. This request was reiterated in her letter dt. 5.10.2016 along with a bona fide certificate issued by the Principal of the College which is peculiarly dated 10.5.2016 prior to transfer order, and

perhaps is actually issued on 5.10.2016. A reply is on record referring her to the rules for retention of accommodation when permanent posting is carried out in the mid-academic session and when school going children are involved. She was warned that accommodation could be held for only 60 days and not one year and penal rent would be recovered for the excess period. A further letter is on record dt. 7.10.2016 observing that her application for retention of government accommodation has not been forwarded through the proper channel and the certificate of the college authorities does not mention academic session and non-availability of hostel facility. To this, the applicant has replied stating that her application was already forwarded along with certificate through proper channel mentioning academic year as July, 2015 to June, 2017 and advising them to obtain recommendation of her CRO/Commandant. On

25.10.2016 the Quarter Master writes on behalf of Commandant of APTC Depot that she has neither taken sanction for retention nor vacated the quarter which was therefore unauthorized occupation from 10.8.2016 and accordingly, a notice was issued to her on 28.10.2016.

5. The respondents have stated that civilian employees borne on a common roster on zonal basis can be transferred on administrative grounds within the same zone and company. Those on All India basis can be transferred anywhere in the country. Therefore, the transfer is as per rules and has been due to service exigency which is mentioned specifically in the impugned order. They have rebutted the applicant's letters saying that she was making frivolous representations in her determination to cancel the transfer order. They have denied that there was any occasion when her work was well appreciated and also asserted that

her willingness to accept responsibilities, perform allotted task etc. are not relevant to the present case where no mala fides exist. They have rebutted her claims that she has medical problems and argued that the transfer would not affect her daughter whose final academic year was ending by March, 2017. They have also stated that the transfer was within Pune and would not harm the applicant in any manner.

6. In her rejoinder, the applicant has referred to her transfer orders as illegal, arbitrary and mala fide arising from her complaint against R-3. She has also referred to the non-issue of CGHS card. She mentions that after appointment she was promoted from Messenger to LDC and then to UDC which proved her professional efficiency. She also refers to the respondents letter dt. 9.8.2016 which says that her transfer is on account of professional inefficiency and its adverse

impact on the working environment of this office.

7. In the sur-rejoinder respondents have again urged the administrative grounds as the basis for her transfer which was therefore in order and there were no mala fides. Regarding her retention of government married accommodation, she should have forwarded her request duly recommended by the Commanding Officer or Head of the Establishment where posted stating grounds with supporting documents but she has not followed these procedures. Despite that, she has not been disturbed until today pending final orders of this Tribunal. They have urged that her new posting location is just 10 kms away which cannot be a basis for alleging mala fides or for supporting of the excuses that she has given regarding her illness, education of her daughter, financial shock etc. They have added that the applicant had always tried to avoid work

by giving excuses and in the present case she has not taken over charge despite official orders which were issued from IHQ of Ministry of Defence at New Delhi which had also advised her to submit applications in proper order for retention of government accommodation.

8. We have gone through the O.A. along with Annexures-A-1 to A-25. We have also gone through the reply to its annexures, rejoinder and sur-rejoinder filed and have carefully examined the official policy documents annexed in the case.

9. We have heard the learned counsel for the applicant Shri S.M.Vakhare and the learned counsel for the respondents Shri B.K.Ashok Kumar and have carefully considered the facts, circumstances, law points and rival contentions in the case.

10. In this case the application has been filed within the time frame allowed from the date of transfer order. The

impugned order dt. 15.8.2016 cites service exigency and administrative grounds as the reason for effecting her transfer from APTC Records to DEG, Kirkee located 10 kms away. However, a later letter dated 9.8.2016 which appears to be in response to her letter dt. 8.8.2016 says her transfer was sought on account of professional inefficiency and her adverse impact on the working environment for the office while also asking her to file an application for retention of government accommodation. This Tribunal has also perused all her complaints from the year 2014 and 2015 and in particular her request in the last paragraph of the letter dt. 28.11.2014 in which she requests action to be taken to separate her from the CRO's Office at the earliest. It is clear from the complaints and the letters that there is a difference of opinion and misunderstanding that exists in the office that has perhaps affected the working environment of the

office which would be a priority for the officers administering the camp and the office concerned. The orders of posting only cite administrative grounds and exigency and do not make any adverse comment on either the person's character or performance nor do they make any reference to the environment. Therefore it cannot be said that the transfer orders suffer from a legal defect and the transfer on administrative grounds citing merely administrative grounds is quite proper and in order and cannot be considered to be a consequence of some disciplinary procedure whether conducted properly or without regard to the rules of natural justice.

11. The applicant has urged three aspects in support of her request for her retention. The first aspect of financial shock does not now hold good which is at a point nearly more than one year after the receipt of transfer orders. Further, the

place of transfer is barely 10 kms away in the same city of Pune and cannot be considered by any stretch of imagination to be a harsh imposition on her family whatever may be their medical condition. These are all the part of the exigency of service in any establishment, let alone a military establishment. With regard to her request for retention of accommodation in view of the ongoing studies of her daughter who was attending the final year M.Com at a nearby college, the academic year is now long since over. Moreover, the exemption clause under which she was applying was relevant only for school going children and her daughter did not qualify under this clause. Therefore, even this excuse falls to the ground.

12. In the circumstances, this application seems to have no merits whatsoever and the applicant is directed to obey orders both with regard to her posting and on the vacation of accommodation and her

salary may be paid and recovery of rent effected in accordance with existing regulations considering the above views of this Tribunal.

13. The O.A. is accordingly dismissed. Interim orders are withdrawn. There will be no order as to costs.

(R.Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J)

B.

