

o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

CENTRAL ADMINISTRATIVE TRIBUNAL KOLKATA BENCH, KOLKATA

Date of order: 26.02.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. O.A. 350/1233/2018 Prasanta Kumar Mandal (SC),
CPC. 350/00085/2019 Son of Late Haripada Mandal,
M.A. 350/00048/2019 Aged about 53 years,
M.A. 350/00779/2018 Residing at 'Ankita Apartment',
Post Office – Nabapally,
Police Station – Barasat,
District – 24 Parganas (North),
Pin – 700 126
At present working as Private Secretary
In the Debts Recovery Tribunal – I,
Kolkata, Jeevan Sudha Building,
42G, Jawaharlal Nehru Road,
9th Floor,
Kolkata – 700 071
2. O.A. 350/1266/2018 Shiv Shankar Naskar,
CPC. 350/00089/2018 Son of Late Krishnadhan Naskar,
M.A. 350/00052/2019 Aged about 50 years,
M.A. 350/00777/2018 Residing at village – Mrijanagar,
Post Office – Chaitanyapur,
Police Station – Mandir Bazar,
District – 24 Parganas (South),
Pin – 743395
At present working as Upper Division Clerk
In the Debts Recovery Tribunal – I,
Kolkata, Jeevan Sudha Building,
42C, Jawaharlal Nehru Road,
7th Floor,
Kolkata – 700 071.
3. O.A. 350/01267/2018 Ms. Dipannita Das,
CPC. 350/00090/2018 Daughter of Late Nalini Ranjan Das,
M.A. 350/00050/2019 Aged about 42 years,
M.A. 350/00696/2018 Working to the post of Upper Division Clerk,
M.A. 350/00778/2018 in the Debts Recovery Appellate Tribunal,
Kolkata – 9,
Old Post Office Street,
7th Floor,
Kolkata – 700 001
And Residing at 261 (Old)/512 (New),

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o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

Rishi Bankim Avenue,
Post Office – Bhadreswar,
District – Hooghly,
Pin – 712 124.

4. O.A. 350/01268/2018 Anup Mitra,
CPC. 350/00088/2018 Son of Late K.L. Mitra,
M.A. 350/00049/2019 Aged about 50 years,
M.A. 350/00695/2018 residing at 5/14, N.S. Sarani,
M.A. 350/00776/2018 Baidyapara, Baidyabati,

Post Office – Baidyabati,
Police Station – Serampore,
District – Hooghly,
Pin – 712222

At present working as Private Secretary to the
Hon'ble Chairperson,
Debts Recovery Appellate Tribunal
Kolkata.

Applicants

VERSUS

1. Union of India
Service through the Secretary,
Ministry of Finance,
Department of Financial Services (Banking
Division),
Jeevan Deep, 10, Parliament Street,
New Delhi – 110 001

2. The Joint Secretary,
Ministry of Finance,
Department of Financial Services (Banking
Division),
Jeevan Deep 10, Parliament Street,
New Delhi – 110 001.

3. The Registrar,
Debts Recovery Tribunal – 2,

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o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

Hyderabad,
1st Floor,
Hotel Palace Heights Building,

Triveni Complex,
Abids,
Hyderabad – 500 001.

4. The Registrar,
Debts Recovery Tribunal – I,
Hyderabad,
3rd Floor,
Palace Heights,
Triveni Complex,
Abids,
Hyderabad – 500 001.

5. The Debts Registrar,
Recovery Appellate Tribunal,
Kolkata,
Service through the Registrar,
9, Old Post Office Street,
7th Floor,
Kolkata – 700 001.

6. The Registrar,
Debts Recovery Tribunal – I,
Kolkata, 'Jeevan Sudha Building',
9th Floor, 42C, Jawaharlal Nehru Road,
Kolkata – 700 071.

7. The Registrar,
Debts Recovery Tribunal,
Siliguri, PCM Tower,
2nd Mile,
Sevoke Road,
Siliguri – 734 001.

8. The Registrar,
Debts Recovery Tribunal,
Cuttack, CDA,
Sector – 7,
Markat Nagar,
Cuttack – 753 014,
Odisha.

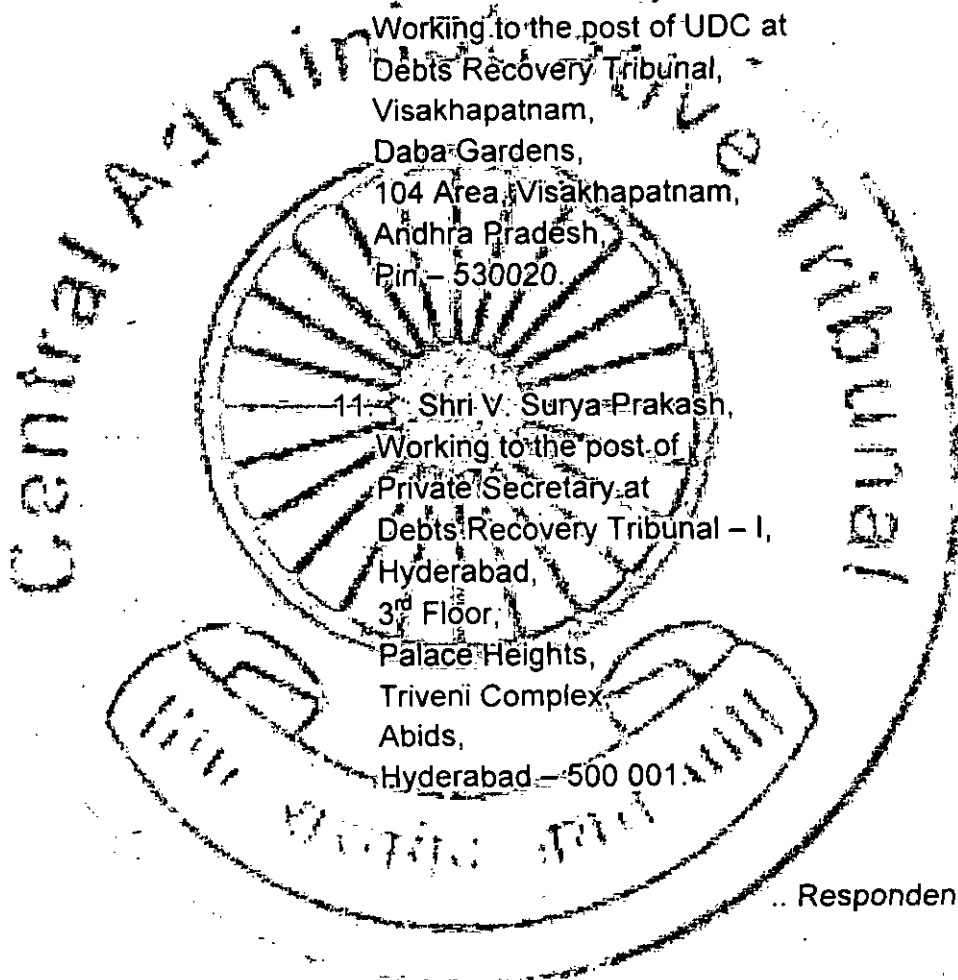
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o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

9. Shri K. Suresh,
Working to the post of UDC of Debts Recovery
Tribunal,
Visakhapatnam,
Daba Gardens,
104 Area, Visakhapatnam,
Andhra Pradesh,
Pin – 530020.

10. Shri P. Kanka Raju,
Working to the post of UDC at
Debts Recovery Tribunal,
Visakhapatnam,
Daba Gardens,
104 Area, Visakhapatnam,
Andhra Pradesh,
Pin – 530020.

11. Shri V. Surya Prakash,
Working to the post of
Private Secretary at
Debts Recovery Tribunal – I,
Hyderabad,
3rd Floor,
Palace Heights,
Triveni Complex
Abids,
Hyderabad – 500 001.



For the Applicants : Mr. B. Bhushan, Counsel
For the Respondents : Mr. R. Halder, Counsel

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o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

ORDER

Per Dr. Nandita-Chatterjee, Administrative Member:

The four applicants in these four Original Applications have prayed for similar relief; therefore, all these O.A.s are taken up for hearing analogously to be disposed of by a common order.

2. Heard both Ld. Counsel, examined documents on record. Both Ld. Counsel have submitted their written notes of arguments citing judicial decisions in their support:

3. The case of the applicants, as articulated by their Ld. Counsel, is that the applicants have challenged transfer orders dated 31.7.2018 issued by the Registrar, DRAT, Kolkata. The transfer orders, as impugned, have been issued on the basis of the respondents' transfer policy dated 9.7.2018.

The applicant in O.A. No. 1233 of 2018 (*Prasanta Kumar Mondal*) and O.A. No. 1266 of 2018 (*Shiv Shankar Naskar*) had joined the office of the DRT-1, Kolkata in the year 1.10.1999 and 7.4.1997 on deputation basis and were subsequently absorbed thereafter on 31.7.2002 and 2.3.2001 on the basis of the Recruitment Rules, 2001 and Recruitment Rules, 1998 respectively as notified by Government of India vide notification No. 48 dated 1.12.2001 and 02 dated 9.1.1999. The applicants in O.A. No. 1267 of 2018 (*Dipannita Das*) and O.A. No. 1268 of 2018 (*Arup Mitra*) both joined the office of the DRAT, Kolkata in the year 08.08.2000 and 27.3.2000 on deputation basis and were subsequently absorbed thereafter on 08.08.2003 and 26.3.2004 respectively, on the basis of the Recruitment Rules, 2002 and Recruitment Rules dated 15th November, 2001.

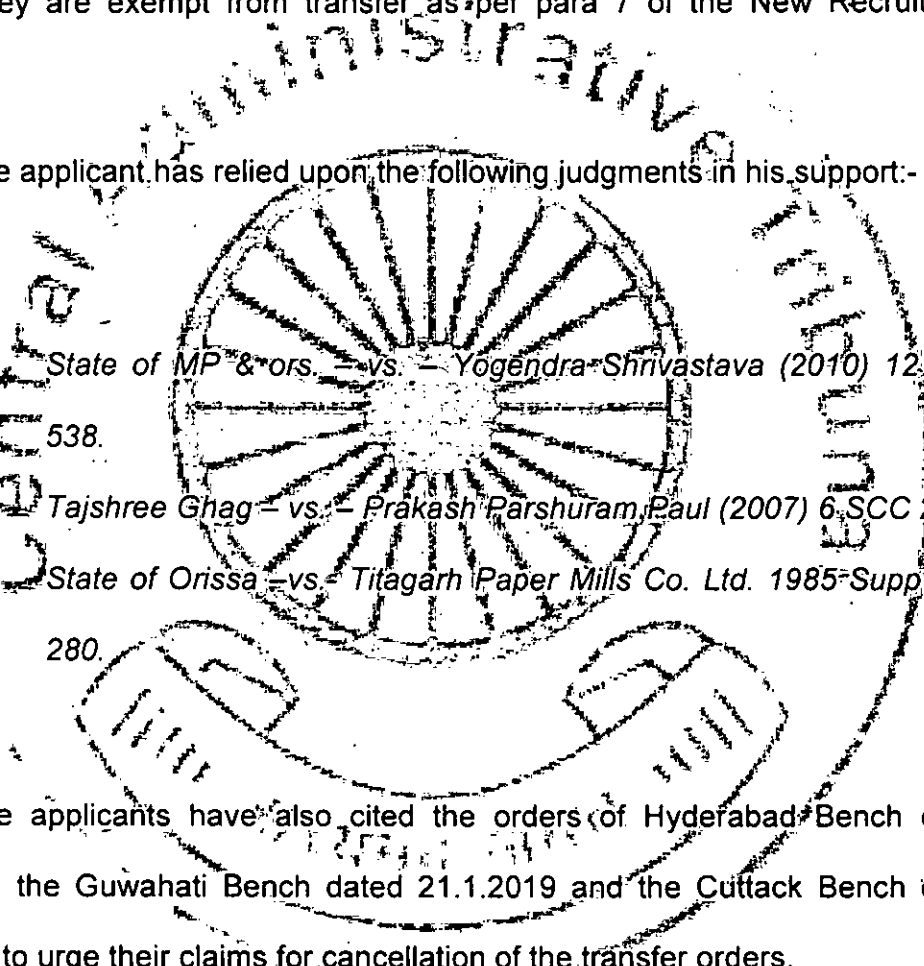
The respondent authority notified new Recruitment Rules on 8th June, 2018 as per powers conferred by the Section 36 of the Recovery of Debts Due to

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o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

Bank and Financial Institution Act, 1993 in supersession of all previous Recruitment Rules. Ld. Counsel for the applicant submits that, one para 7 has been introduced in Recruitment Rules, 2018 entitled "Transfer" which is contrary to the earlier Recruitment Rules in which there was no provision of transfer. That, the respondents have framed a transfer policy dated 9.7.2018 without the approval of the competent authority and, that, all four applicants were transferred consequent to such policy. Also, as the applicants had joined against "encadred posts" they are exempt from transfer as per para 7 of the New Recruitment Rules.

The applicant has relied upon the following judgments in his support:-

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- (i) *State of MP & ors. vs. Yogendra Shrivastava* (2010) 12 SCC 538.
 - (ii) *Tajshree Ghag vs. Prakash Parshuram Paul* (2007) 6 SCC 220.
 - (iii) *State of Orissa vs. Titagarh Paper Mills Co. Ltd.* 1985 Supp SCC 280.

The applicants have also cited the orders of Hyderabad Bench dated 1.1.2019, the Guwahati Bench dated 21.1.2019 and the Cuttack Bench dated 4.2.2019 to urge their claims for cancellation of the transfer orders.

4. Per contra, the respondents have argued that all the applicants were absorbed in the service of DRAT/DRTs in pursuance to the Debt Recovery Tribunal (Salaries, Allowances and Other Conditions of Service of the Recovery Officer and other Officers and Employees) Rules, 1993 and/or Rule 2002 and, both the Rules-1993 and 2002 are derived from Section 7(3) and Section

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o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

36(2)(a) of the "Recovery of the Debts Due to Banks and Financial Institution Act, 1993 (RDBFI Act)".

That, the respondent authorities issued recruitment rules vide their notification dated 8.6.2018, superseding the earlier recruitment rules and, that, Rule 7 of the new Rules highlighted the scope of "transfer". In that, it notified that every person, appointed to the post in DRAT, Kolkata and DRTs under its jurisdiction, is liable to be transferred within the jurisdiction of the Debt Recovery Appellate Tribunal, Kolkata, provided that an officer appointed on deputation basis or against encadred posts are not liable to be transferred. In consonance with Rule 7 of the Recruitment Rules, 2018, a transfer policy was thereafter formalized on 9.7.2018 with the approval of the Chairperson of the Debt Recovery Appellate Tribunal, Kolkata wherein it was noted that employees appointed in Debt Recovery Appellate Tribunal, Kolkata and Debt Recovery Tribunals under its jurisdiction who have completed 7 years in service including all capacities, are liable to be transferred and posted outstation and, as the applicants in the instant O.A.s have been continuing in their home postings for more than 16 years, they were transferred vide orders dated 31.7.2018 and relieved accordingly. It was also contended that the respondent authorities have decided to prefer an appeal before the Hon'ble Telengana High Court against the orders of the Hyderabad Bench of the Tribunal issued on 1.1.2019.

5. The main point for determination before us is whether the transfer orders dated 31.7.2018 merit judicial intervention.

6. At the outset, we refer to the offer / order of absorption of the respondent authorities with respect to the applicants which was produced before the Tribunal by the respondent authorities. The offer made to the applicant in O.A. No. 350/01268/2018 is quoted below in verbatim:

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o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEBTS RECOVERY APPELLATE TRIBUNAL
KOLKATA

15 N, Nelia Sengupta Sarani,
"HUDCO" Building, 4th Floor,
Kolkata - 700 087.

No. 1/6/DRAT/Cal/2002/153-160

Date: March 26, 2004

OFFICE ORDER

Consequent upon the recommendation of Departmental Promotion Committee and approval of the Hon'ble Chairperson, DRAT, Calcutta, Shri Anup Mitra, Stenographer Grade-III of the Indian Bureau of Mines, Kolkata, who has been working in this Appellate Tribunal as Stenographer Grade "G" on deputation basis since 27.3.2000, is absorbed in the Debts Recovery Appellate Tribunal, Calcutta, with immediate effect against the Post of Stenographer Grade "C" in the pay scale of Rs. 5500-175-9000/-.

2. The services of Shri Anup Mitra, Stenographer Grade "C" will be governed by the terms and conditions of the DRAT [Salaries, Allowances and other conditions of service of the Officers & Employees] Rules, 1993.

3. Shri Mitra is required to submit his resignation from the post of Stenographer Grade - III in the Indian Bureau of Mines, from the date of his absorption in the Debts Recovery Tribunal, Calcutta.

4. The services rendered by Shri Anup Mitra as Stenographer Grade "C" w.e.f. 24.9.2000 to 25.3.2004 will be taken into account for deciding the eligibility for promotion etc. to the next Higher Grade as per Rule - 5 of the Recruitment Rules in respect of Group 'B' [non-gazetted] posts in Debts Recovery Appellate Tribunal, Calcutta.

Sd/-
[D.P. Shaw]
Section Officer

It is seen therefrom that such offers/orders of absorption in the service of DRAT, Kolkata, were to be governed by "Salaries, Allowances and other conditions of service of the Officers & Employees of Debt Recovery Appellate Tribunal Rules, 1993." In this context, we refer to the DRAT Rules, 1993, which is germane to the lis, and which has been furnished by the respondent authorities in W1 of their written notes of arguments and, particularly, extract the relevant portion therefrom:-

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o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

"THE DEBTS RECOVERY TRIBUNAL (SALARIES, ALLOWANCES AND OTHER CONDITIONS OF SERVICE OF THE RECOVERY OFFICERS AND OTHER OFFICERS AND EMPLOYEES) RULES, 1993

(Notification No. GSR 64(E), dated 4th February, 1994).

In exercise of the powers conferred by sub-section (3) of Section 7 read with sub-clause (a) of clause (2) of Section 36 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) the Central Government hereby makes the following rules, namely:-

1. **Short title and commencement-** (1) These rules may be called the Debts Recovery Tribunal (Salaries, Allowances and Other Conditions of Service of the Recovery Officer and Other Officers and Employees) Rules, 1993.
(2) They shall come into force on the date of their publication in the Official Gazette.

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5. **Conditions of service** - The conditions of service of the Recovery Officer and other officers and employees of the Tribunal in the matter of pay, allowances, leave, joining time, joining time pay, provident fund, age of superannuation, pension and retirement benefits, medical facilities, conduct, disciplinary matters and other conditions of service, shall be regulated in accordance with such other rules and regulations as are, from time to time, applicable to officers and employees of the Central Government belonging to Group 'A', Group 'B', Group 'C' and Group 'D' as the case may be and drawing the corresponding scales of pay."

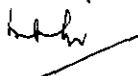
Hence, the abovenoted conditions of service were undisputedly applicable to the four applicants when they agreed to their absorption in DRAT. The respondents have furnished before us the source from which the respondent authorities have drawn their power to promulgate such rules of which the contents of Rule 36, and, particularly, clause 2(aa) thereof, are reproduced as below:-

"36. Power to make rules - (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing powers, such rules may, provide for all or any of the following matters, namely:

[(a) other business or commercial rights of similar nature under clause (jb) of section 2]

[(aa)] the salaries and allowance and other terms and conditions of service of the Chairpersons, the Presiding Officers, Recovery Officers and other officers and employees of the Tribunal and the Appellate Tribunal under Sections 7, 12 and 13."



o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

Ld. Counsel for the applicant, in para 12 of his written notes of arguments, has also admitted to such authorization of the respondent authorities to make rules with regard to service conditions of the employees, particularly, when he states as follows:-

"12. The respondents have relied upon the Sections 7, 9 and 36 of Recovery of Debts due to Banks and Financial Institutions Act, 1993 which empowers the Central Government/competent authority to make rules with regard to the service conditions of the employees. It is not disputed that formulation of the Act is substantial and rules framed therein is procedure."

The main stay of the arguments of Ld. Counsel for the applicant is that the applicants have been absorbed as per the recruitment rules notified between 1999 and 2002 and hence, subsequent recruitment rules notified in 2018, without any retrospective effect, does not govern the service conditions of the applicants. To adjudicate on this issue, we refer to the ratio decidendi of the Hon'ble Apex Court in various judicial pronouncements as follows:-

In **Somesh Tiwari v. U.O.I.**, (2009) 2 SCC 592, in **Tushar D. Menon**, (2009) 11 SCC 678 as well as in **U.O.I. -vs. - Muralidhara Menon** (2009) 9 SCC 304, the Hon'ble Apex Court has consistently held that transfer is an incidence of Government service. Most importantly, in **Seshrao Nagorao Umap v. State of Maharashtra**, (1985) 11 LLJ 73 (Bom) the Hon'ble Apex Court has stated that transfer is an implied condition of service. In **Varadha Rao**, 1986 (3) SLR 60 (SC) it was further clarified that the word "incident" must necessarily connote an element which is an inbuilt component in the total concept of service. In **General Secretary of West Bengal, Civil Defence Service Officers' Guild v. State of West Bengal**, 1991 (2) SLR 742 it has been observed that there is no such absolute proposition that, in the absence of service conditions framed by the appropriate authority, no order of transfer can be made. In **State of Rajasthan v. Anand Prakash Solanki**, (2003) 7 SCC 403, the Hon'ble Apex Court postulated that the power to make an appointment includes the power to transfer unless the same is expressly barred and, in **K.N. Chelubhiah v. Management of Bharat**

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o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

Heavy Electrical Limited, 1993 (1) SLR 359, it was further observed that, in most cases, provision of transfer is expressly made by rules of administrative instructions and policy circulars. The Hon'ble Apex Court also held in **Varadha Rao (supra)** that, if the appointment itself is expressed to be a specified non-transferable post, then there will be no such power of transfer with the authorities.

In the instant matters, the applicants were absorbed under 1993 Rules wherein the conditions of service did not expressly eschew transfer. Neither did the office orders on their appointments expressly state that the applicants were appointed in non-transferable posts.

It has been admitted by the applicants that the competent authority is indeed empowered to make rules with regard to service conditions of employees. Having arrived at this undisputed premise, we refer to **Varadha Rao (supra)**, wherein the Hon'ble Apex Court held as follows:-

Transfer is always understood and construed as an incident of service. The words 'or other conditions of service' in juxtaposition to the proceeding words 'denies or varies to his disadvantage his pay, allowances, pension' in r. 19(1)(a) must be construed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the Government servant and some disadvantage touching his pay, allowances, pension, seniority, promotion, leave etc. It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post.

Accordingly, transfer of the applicants does not result in any alteration of any of the conditions of service to their disadvantage as transfer is an ordinary incidence of service. In the absence of contrary provisions in their appointment orders, it is difficult to agree to the proposition of the applicants that, when they were recruited between 1993 to 2002, there were any express provisions that

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o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

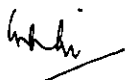
they are getting absorbed in non-transferable posts. In **Seshrao (supra)**, the Hon'ble Court, while referring to observations in **E.P. Royappa v. State of Tamil Nadu & others 1974 – ILLJ 172** has held that "...once a policy is laid down by Government it must apply equally to every employee."

Ld. Counsel for the applicant has relied on **Yogendra Shrivastava (supra)** wherein the Hon'ble Apex Court has held that rights and benefits which has already been earned or acquired under existing rules cannot be taken away by subsequent amendment unless stated in the new recruitment rules. The applicants, however, have not been able to establish that they had ever acquired a right to be absorbed or to continue in non-transferable posts. There are no such averments either in their offer for absorption or in their appointment orders. The pronouncements in **Tajshree Ghag (supra)** and **Titagarh Paper Mills Co. Ltd. (supra)** are interpreted accordingly.

Ld. Counsel for the applicant has also relied on three orders of the Hyderabad Bench, Guwahati Bench and Cuttack Bench of this Tribunal.

At the outset, we refer to the orders of the Hyderabad Bench dated 1.1.2019 in O.A.s 747/2018, 748/2018, 749/2018 and 750/2018 wherein the Tribunal had relied expressly on the DOPT's O.M. dated 30.9.2009 and, therefore, allowed the applicants, who had approached the Tribunal on the ground that their spouses are working in the establishments of the Central Government at Hyderabad, to be continued at the same place.

The Guwahati Bench had followed the decision of the Hyderabad Bench and allowed the O.A. 315/2018 on 21st January, 2019. It is noted, however, that although expressly sought as a relief before the Guwahati Bench, there are no orders quashing the transfer policy of the respondent authorities.



o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

The Cuttack Bench, passed the following specific orders on 4.2.2019 in O.A. No. 410/2018, while following the ratio of the Hyderabad Bench:

"8. Perusal of the above orders makes it conspicuous that in tune with the orders of transfer of the applicants therein before the CAT Hyderabad Bench the applicant herein has been transferred and relieved and we are satisfied that the facts of this O.A. are quite the same and similar to the facts of the O.A.s before the CAT, Hyderabad Bench. In view of the this, we are not inclined to make a departure from the view already taken by the CAT, Hyderabad Bench under similar facts and circumstances of the case and applying the ratio decidendi in the said OAs, we quash and set aside the order dated 31.7.2017 in so far as transfer of the applicant to DRT-3 Kolkata is concerned. The respondents shall allow the applicant to resume her duties at DRT, Cuttack forthwith with liberty to take steps as per the order dated 1.1.2019 at CAT, Hyderabad Bench."

From all the three orders, the following is inferred:

- (a) That, none of the Benches of the Tribunal has set aside the recruitment rules, 2018 or the transfer policy dated 9.7.2018 of the respondent authorities.
- (b) The Hyderabad and the Cuttack Benches were approached by applicants on spouse grounds.

In the case of the instant applicants, there has not been any averment upfront that the transfers are sought to be quashed on similar personal grounds and that they are similarly circumstanced as the applicants in Hyderabad or Cuttack Bench. Hence, the similarity between the applicants who approached the other Benches, particularly, Hyderabad and Cuttack Bench, ends here.

In **N.K. Singh v. Union of India, (1995) 1 LLJ 854** and in **Abani Kanta Ray v. State of Orissa, 1995 Supp (4) SCC 169**, it has been categorically laid down by the Hon'ble Apex Court that a transfer, being an incidence of service should not be interfered with by Courts unless it is clearly arbitrary or vitiated by mala fides or infraction of any professed norm or principle governing the transfer. In **The General Secretary of West Bengal Civil Defence Service Officers' Guild -versus- State of West Bengal & ors. (supra)** the Hon'ble Apex Court has similarly held that,



o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 696.2018

"..... Whether the service of a Government employee can be better utilized in some other place is not a justiciable issue in a court of law. It will be sufficient to sustain an order of transfer if it can be shown that the service is a transferable one and by the impugned order of transfer, no condition of service or the norm laid down for such transfer has been violated....."

The respondents have cited *UOI vs. Janardhan Debnath (2004) 4 SCC 245* and *Shilpi Bose (Mrs.) v. State of Bihar 1991 Supp. (2) SCC 659* in which the Hon'ble Apex Court has limited the scope of judicial intervention in transfer to malafide or violations of the statute.

The respondents have produced office records before us to substantiate that the transfer policy was issued with the approval of the competent authority, namely, Chairperson, DRAIT. The applicants have not challenged the transfer on grounds of arbitrariness or malafide and their challenge on grounds of the statute is in the guise that the 2018 Recruitment Rules, not having specified any retrospective effect, cannot override the benefits of the 2001 Recruitment Rules. The Hon'ble Apex Court has held in *Varadha Rao (supra)* that transfer is an implied condition of service unless the order of appointment specifically describes the posts to be non-transferable. Neither the earlier Recruitment Rules, nor the orders of absorption or the appointment/absorption orders have specified that the applicants were absorbed in non-transferable posts. Hence, in our considered view, there has been no violation of statutory provision by the authorities. The respondents have also clarified, in response to directions of this Tribunal, that none of the four applicants come under the purview of "Encadred post" so as to be exempt from the category of the Transfer Policy.

7. Accordingly, we do not deem it fit to interfere with the transfer orders dated 31.7.2018 of the respondent authorities as far as the applicants are concerned. The applicants are directed to join their transferred places of posting which, as averred by the respondents, remain vacant as on date. Upon joining, they are at

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o.a. 1233.2018, cpc. 85.2019, m.a. 48.2019, m.a. 779.2018 with o.a. 1266.2018, cpc. 89.2018, m.a. 51.2019, m.a. 777.2018 with o.a. 1267.2018, cpc. 90.2018, m.a. 778.2018, m.a. 50.2019, m.a. 696.2018 with o.a. 1268.2018, cpc. 88.2018, m.a. 49.2019, m.a. 776.2018, m.a. 898.2018

liberty to represent to the authorities for their reposting at DRAT, Kolkata and, if any of the applicants are entitled to advance the grounds as per DOPT's O.M. dated 30.9.2009, the respondent authorities shall consider the same in the light of the decision arrived at by the Hyderabad Bench and Cuttack Bench of this Tribunal. The intervening period will be regularized by the respondent authorities as per law.

8. The O.A.s are disposed of accordingly. Interim orders stand vacated. With the disposal of the O.A.s, the CPCs are dropped and notices, if any issued, are discharged. M.A.s praying for early disposal, release of salary and vacation of interim order, stands disposed of accordingly.

No costs.

(Dr. Nandita Chatterjee)
Administrative Member

Bidisha Baharjee
(Bidisha Baharjee)
Judicial Member

SP

