

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

O.A. No. 431/2017

Date Of Decision: 22nd January, 2019.

**CORAM: R. VIJAYKUMAR, MEMBER (A) .
R.N. SINGH, MEMBER (J) .**

Balchandra G. Devadiga,
Age 47 years, son of Gangadhar Devadiga,
working as Stenographer Grade "D" in Office
of Regional Director, Bureau of Civil Aviation
Security, Mumbai (Under Transfer) and
residing at: 45/2226, Gandhinagar,
Bandra (East), Mumbai- 400 051.

...Applicant.

(By Advocate Shri R G Walia)

Versus

1. The Union of India,
Through its Secretary,
Government of India,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Opp. Safdarjung Airport,
New Delhi- 110 003.
2. Director General,
Bureau of Civil Aviation Security,
Ministry of Civil Aviation,
Government of India, "A" Wing,
3rd Floor, Janpath Bhawan,
Janpath, New Delhi- 110 001.
3. Regional Director,
Bureau of Civil Aviation Security,
Ground Floor, New Airports Authority
of India Building, Near Chakala
Cigarette Factory, New Airports
Colony, Parsiwada, Vile Parle (East),
Mumbai- 400 099.
4. Kumar Rajesh Chandra,
Director General,
Bureau of Civil Aviation Security,
Ministry of Civil Aviation,
Government of India, "A" Wing,

3rd Floor, Janpath Bhawan,
Janpath, New Delhi- 110 001.

...Respondents.

(By Advocate Shri V S Masurkar)

Reserved on : 09.01.2019

Pronounced on : 22.01.2019

ORDER

PER:- R. VIJAYKUMAR, MEMBER (A).

This application has been filed on 11.07.2017 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) This Hon'ble Tribunal will be pleased to call for the records which led to the passing of the impugned order dated 30.06.2017 and 12.04.2017 issued by Respondents i.e. Annexure "A1" and Annexure "A2" and after going through its propriety, legality and constitutional validity be pleased to quash and set aside the same with all consequential benefits.

b) The Hon'ble Tribunal will be pleased to Order and direct the respondents to continue and post the Applicant in Mumbai.

c) This Hon'ble Tribunal will be pleased to Order and direct the Respondents to pay and release the salary of the Applicant which has not been paid to him since April 2017.

d) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the

case.

e) Cost of this Original Application be provided for."

2. This is a second stage litigation by the applicant against transfer orders issued by the respondents in Office Order No. G-11019/4/2015-ADMINISTRATION SECTION-BCAS (E-111918) dt. 12.04.2017 recording his transfer in the grade of Stenographer Grade - D, his current position with the Regional Office, Bureau of Civil Aviation Security (BCAS), Mumbai to Regional Office, BCAS, Ahmedabad and issued with the approval of the Director General, BCAS. The applicant had challenged these transfer orders in OA No. 247/2017 dt. 09.06.2017 impleading The Union of India, through the Secretary, Ministry of Civil Aviation; The Director General, BCAS, New Delhi; The Regional Director, BCAS, Mumbai and Mr. A. Manna, Assistant Director, BCAS, Mumbai. In this OA, he had pleaded that he had unknowingly and unintentionally become the victim of strained relations between the DG,

BCAS, New Delhi (present R-2) and the Regional Director, BCAS Mumbai (present R-3) and had been transferred. In addition to various grounds cited in that OA, he had specifically alleged malafides against Shri A. Manna, Assistant Director, whose conduct in receipt and implementation of the transfer orders by simultaneous service of transfer and relief orders suggested that the applicant's transfer was not bonafide. He had also raised issues of personal hardship which he had detailed in that OA. The specific grounds raised by him in that OA are as under:

"(a) The impugned transfer order and relieving order dated 12.04.2017 is exfacie illegal, arbitrary, passed in colourable exercise of powers and deserves to be quashed and set aside.

(b) There is no provision for transfer of ministerial staff out of their respective Regional Offices. There is no transfer policy which envisages or regulates transfer of Ministerial staff. The policy of transfer has been formulated only for the officers working in the BCAS. A copy of said transfer policy for officers issued vide letter dated 8.3.2011 is annexed hereto and marked as Annexure A-3. The

applicant is not governed by the said transfer policy.

(c) None of the ministerial staff in the Regional Offices of Bureau of Civil Aviation Security are liable for transfer and none have been transferred till date. Especially the Stenographers' appointed and posted in the three other Regional Offices at New Delhi, Chennai and Kolkata have not been transferred out of their respective cities right from the date of their appointment. The applicant is thus singled out for hostile discrimination for no fault of his.

(d) The applicant does not have the longest stay amongst all the four Stenographers Grade 'D'. The Stenographers posted in Regional Offices at Kolkata and Chennai have been working at the same stations for more duration than the applicant. Therefore, if there was any exigency of service they ought to have been considered for transfer first.

(e) The impugned transfer order does not specify any reason for abrupt transfer of the applicant. The impugned order does not even say that the transfer is effective in public interest. This shows that there is no valid reason for transferring the applicant out of Mumbai.

(f) As pointed out hereinabove, the applicant is transferred on account of the strained relations between the Director General and Regional Director, Mumbai with which the applicant has absolutely nothing to do. The decision to transfer the applicant is apparently taken on account of a mis-conception that the applicant

was close to the Regional Director, Mumbai and was assisting him in the matter of his own transfer. This cannot be the reason for exercising power of transferring the employees.

(g) The power to transfer has not been exercised for the purpose for which the same is conferred on the Respondent No.2 and there is thus colourable exercise of power on the part of Respondent No.2.

(h) The transfer is not in public interest, but rather against it. No other Stenographer has been posted in place of the applicant at Mumbai. Thus, the Office of Regional director at Mumbai would be without any Stenographer. Most of the administrative work and some part of the operational work at Regional Office, Mumbai was being handled by the applicant. Without the applicant, the Regional Office, Mumbai would be left with just two Junior Clerks and one Senior Clerk, who would not at all be able to handle the workload in absence of a Stenographer Grade 'D'. The applicant is in the grade pay of Rs.4600/- and the clerical staff in the lower grade pay are not expecting to discharge the duties and responsibilities which the applicant has been discharging for the last 27 long years. On the contrary, there is no requirement of a Stenographer at the Regional Office, Ahmedabad which is headed by a mere Assistant Director. The air operations at Ahmedabad airport are far lesser than and almost negligible as compared to Mumbai. Thus, the applicant is being shunted out from a place involving higher duties and responsibilities and posted at such a place where an experienced

Stenographer like the applicant is not all needed. Even if it is assumed that a post of Stenographer has been sanctioned in the newly created Regional Office at Ahmedabad, Respondent No.2 ought to have recruited a fresh staff rather than punishing the applicant with transfer.

(i) The fact that relieving order was issued on the same day of issuance of transfer order and relieving order was served before transfer order shows that the transfer is not routine and it was desired that the applicant should not continue at Mumbai even for a day. Till date, the transfer order dated 12th April, 2017 has not been served on the applicant and he has been given mere copy of it, that too on his insistence.

(j) The Impugned transfer order suffers from official malice. This is apparent from the fact the transfer order is deliberately timed during the absence of Regional Director, Mumbai. The Regional Director, Mumbai. The Regional Director, Mumbai was on sanctioned leave for 4 days from till 10.04.2017 to 13.04.2017. In normal course the transfer order could have reached Applicant from Delhi to Mumbai and the Regional Director would have relieved the Applicant after his return from leave. However the entire process was so hurriedly implemented that the same clearly smacks of official malice. The decision to relieve the Applicant was taken by the Assistant Director in absence of the Regional Director. The Assistant Director directly asked the Applicant to sign in acknowledgement of the relieving order without even waiting for arrival of the hard copy of the

transfer order dated 12.4.2017 at Mumbai. It appears that the Assistant Director merely received a copy of the transfer order on email, which he initially suppressed from the Applicant and directly sought to relieve him from Mumbai. In normal circumstances the Assistant Director ought to have waited for resumption of the Regional Director till Monday, 17.4.2017 for relieving the Applicant in pursuance of the order dated 12.4.2017. However deliberate hurry was shown for relieving the Applicant before the Regional Director could resume after end of his leave. The Applicant believes that the Assistant Director who hastily served the relieving order on the Applicant, did not take any guidance or instructions or approval of the Regional Director and rather deliberately kept him in dark about Applicant's transfer and relieving. The Respondent No.4 therefore must explain his conduct in hastily serving the relieving order on the Applicant and the purpose behind doing so. Obviously the Respondent No.4 must have acted on the directives of Respondent No.2. But such conduct clearly show that the reasons behind Applicant's transfer is not bonafide and that the Applicant's transfer is clearly linked to the strained relations between the Respondent No.2 and Respondent No.3.

(k) There was no need to show such great haste in relieving the Applicant. It is not that the post at Ahmedabad was required to be filled urgently on 12th April 2017 itself or that some one had arrived at Mumbai to take over the charge. In these circumstances the Respondents must explain as to why

the Applicant was relieved on 12th April, 2017 even before the transfer order could be served on him.

(l) The applicant was rather looking forward for his promotion to the post of either Security Officer or Assistant Commissioner of Security and has been pursuing the same. At such juncture, the applicant is transferred as Stenographer out of Mumbai.

(m) The impugned transfer will cause severe difficulties for the applicant and his family. The applicant has one daughter aged 11 years and son aged 6 years. The applicant's daughter Soumya Devadiga has been diagnosed with developmental delays and is thus facing mental challenges. Copies of the relevant reports and certificate are annexed hereto and marked as Annexure A-4. The applicant is therefore required to take care of his daughter who cannot perform day to day activities on her own. Even at academic level, she is not able to cope up and is attempting to take education with great difficulties. Even at the age of 11 years she is not able to write properly and has been advised to be shifted to a Special School meant for Mentally Challenged children. The applicant's daughter unfortunately suffered from epileptic attack twice when she was 5 and 6 years old on account of which she is experiencing developmental delays. The applicant's daughter needs assistance even for use of toilet. It is therefore impossible for the applicant to leave his family at Mumbai and work at Ahmedabad. The applicant's wife cannot alone look after both the children as well as aged parents of the applicant. The

applicant's wife was diagnosed with tuberculosis in the year 2015 and is under medical treatment. A copy of Applicant's wife's certificate is annexed herewith and marked as Annexure-A-5. The applicant's father has been diagnosed with 100% and 70% blockages in the arteries in the year 2015 and has been advised not to undergo by-pass surgery due to his advanced age of 79 years. A copy of discharge summary of applicant's father dated 27.1.2015 is annexed hereto and marked as Annexure A-6. Therefore, on family grounds also the impugned transfer deserves to be quashed and set aside.

3. This Bench of the Tribunal considered the case of the applicant at length and recorded its orders as below:

"62. From the above discussions, we do not find any substance in any of the administrative grounds raised by the applicant for challenging the impugned transfer order.

x x x

70. From the above discussions, we are of the considered view that at this stage no relief can be granted to the applicant, keeping open the issue of seeking cancellation/modification of the impugned transfer order on personal grounds of illness of his family members which would result in causing hardship to him in case the impugned transfer order is not cancelled/modified.

71. In the result, we simply

dispose of the OA without disturbing the impugned transfer order with a liberty to the applicant to submit a fresh representation to the respondent No.2, through proper channel, raising personal grounds only for cancellation/modification of the impugned transfer order by annexing all the relevant documentary evidence concerning the medical treatment of his family members, within a period of two weeks from today.

72. On receipt of the representation as above, R-2 is directed to consider and pass a reasoned and speaking order thereon in accordance with law, within a period of two weeks from the date of receipt of the representation, especially by considering DOPT's O.M. dt. 6.6.2014 and 17.11.2014 (Annexure-A-11) in respect of disability of applicant's daughter.

73. The orders so passed shall then be communicated to the applicant at the earliest, who will be at liberty to approach the appropriate forum.

74. Pending consideration of applicant's representation by R-2, the impugned relieving order dt. 12.4.2017 is revoked and applicant will be at liberty to resume duty in office of R-3."

4. The applicant then filed a detailed representation on 21.06.2017 raising all the personal grounds of hardship that

were referred by this Tribunal along with available documentary evidence in support, for the consideration of the respondents and the respondent No.2 has passed speaking orders in their reference No. No. A-60015/69/2017-PERSONNEL SECTION-BCAS (E-121199) dt. 30.06.2017 on the specific pleas relating to personal hardship that the applicant has presented in opposition to his transfer orders and by which he had requested retention at Mumbai.

5. In this present OA, the applicant has challenged the transfer orders stating that he is the only Stenographer available and posted at Mumbai and that there is no Transfer Policy or Placement Committee as required to be constituted by the orders of the Supreme Court in ***T.S.R. Subramanian & Ors. Vs. Union of India & Ors. AIR 2014 (SC) 279 [Special Leave Petition (C) No. 22311 of 2012 with S.L.P. © Nos. 22307-22309 of 2012, dated 02.12.2013]***. He has also stated that there is no post of Stenographer Grade-D available at Admedabad where he has

been transferred and that since there were no clerical staff available there, he was being asked to do clerical work in addition to the specified work for a Stenographer. He has also argued there were other persons available at Mumbai in the clerical cadre for such a post and that Mumbai was an extremely busy Airport in comparison to Ahmedabad and therefore, when he was being transferred from Mumbai to Ahmedabad, the respondents had not considered this aspect. He also alleges malafides against respondent No.4 who occupies the post cited as respondent No.2 which he states is on account of the strained relations between the respondent No.4 and respondent No.3 who was his immediate superior as Regional Director, Mumbai Office and that he was a scapegoat of their enmity. He states that he was being transferred out of malice to cause inconvenience to the Regional Director who is respondent No.3 in this OA. Further, he has argued personal grounds in respect of his daughter, who is stated to be a differently abled child and by

which, in consideration of the Policy of Government in OM No. 42011/3/2014-Estt.(Res) dt. 06.06.2014, exempts care-givers of a disabled child from routine and rotational transfers.

6. Respondents have affirmed the liability of the applicant to serve anywhere within the country and have relied on the orders of the Hon'ble Apex Court ***in State Bank of India Vs. Anjan Sanyal & Ors. [(2001(3) Supreme 436]; in State of Madhya Pradesh & Ors. Vs. S.S. Kourav & Ors.[JT 1995(2) SC 498]; in Union of India Vs. S.L. Abbas.[AIR 1993 SC 2444]; in N.K. Singh Vs. Union of India[(1994) 28 ATC 246]; in S.C. Saxena Vs. UOI & Ors.[(2006) 9 SCC 583]*** and in ***Full Bench CAT, Vol.I page 80. Kamlesh Trivedi***; in which the Government servant was required to obey the transfer order and then ventilate his grievances. They also relied on the judgments of the Hon'ble Apex Court in the case of ***Rajendra Singh Vs. S/O UP[2010(1) SLR (SC) 633]*** and ***in Airport Authority of India Vs. Rajeev Ratan Pandey & Ors.[(2009) 8***

SCC 337] on the aspect of lack of material in support of the allegation of malafides. They refer to the orders of this Bench in the earlier OA dt. 12.06.2017, in which the transfer orders were upheld and the applicant was required to represent regarding the medical conditions and personal hardship which was to be considered for passing speaking orders by the respondents and which had been done in impugned orders dt. 30.06.2017. They further state that there are no clerical staff in the BCAS Office at Ahmedabad and that, in the process of restructuring, they have created 20 posts of Stenographer Grade-D in the Regional Offices of BCAS. The applicant had been transferred without affecting his service conditions of seniority or promotion prospects and further, in contrast to the lack of staff at Ahmedabad, there were three other experienced clerical staff at Mumbai to handle the work. They also state that all Regional Offices are headed by Regional Directors and this nomenclature makes no differentiation between

Joint Director, Deputy Director and Assistant Director and a Stenographer Grade-D is attached in each of these Regional Offices which are currently nine in number and are being increased to twenty. They also refute the allegations of malafide stating that there is no relationship between the disputes of Shri B S Tiwari, Regional Director, Mumbai who is a Group-A Officer and the issues raised by the applicant in the present OA. They also deny the contention that the transfer orders are illegal and state that the DG, BCAS is the Head of Department and Appointing Authority for the applicant and has the requisite powers in this matter. They also cite a catena of judgments that may guide this Tribunal in judicial review of the transfer orders impugned by the applicant in the earlier OA and now challenged once again. With regard to the DoPT OM No. 11013/10/2012-Estt.A dt. 02.07.2015 of framing a Transfer Policy and a Civil Service Board, they argue that it is advisory in nature and the required policy has to be framed by the

Ministry. In its absence, the Head of Department is the Competent Authority. With regard to the aspect of his personal hardship and medical conditions, they state that they have fully considered his representation in the impugned order and are in conformity with the rules in this regard. They also state that the applicant is working at Mumbai for more than 27 years and can have no valid grievance in this transfer.

7. In their rejoinder, the applicants have reiterated the arguments made initially and have emphasized that as per the DoPT OM dt. 06.06.2014, parents of a disabled child will not be subject to transfer. The applicant also asserts that he is in the process of challenging the orders of this Tribunal in OA No. 247/2017 dt. 09.06.2017 before the Hon'ble High Court of Bombay.

8. During arguments, learned counsel for applicant reiterated the various arguments made in the submissions. He supported his allegations of malice by referring to the dispute between the Director

General (R-2) and Regional Director (R-3) and that he was much senior to a clerical level staff. He also argues that the transfer and relieving orders were issued on the same day. He further states that when he had made a representation, that representation was not placed before the Committee which was required to be formed as per the Hon'ble Apex Court judgment in **T.S.R. Subramanian case (supra)** because no such Committee existed. He agreed that the service conditions of applicant were intact and unaffected by the transfer. With regard to his claim for exemption in view of his disabled child, he relied on the decision of the **Principal Bench of this Tribunal in OA No. 2233/2017 with OA NO. 2236/2017 dt. 08.02.2018 (Pradeep Kumar Shrivastava & Mukesh Prasad Vs. Union of India & Ors.):**

"25. From the reading of the various documents referred to above, it comes to the fore that it is not only the medical facilities which matter for the applicant to provide medicare and for rehabilitation of his child and wife, but the host of factors referred to hereinabove which are also to be taken note of, rather

given credence and weightage. Autism has been introduced in the supplementary policy dated 17.11.2014, which has a laudable purpose and clear objective to provide circumstances and environment for the rehabilitation of such a child. Apart from the above policy decision, the Parliament enacted "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995". Besides defining the nature of disabilities for the persons suffering from disabilities and various opportunities to them, Section 66 of the aforesaid Act also provides social security, which includes rehabilitation of all the persons with disabilities, including grant of financial assistance to non-governmental organizations providing such kind of rehabilitation. The 1995 Act has now been replaced by the new Act, namely "Rights of Persons with Disabilities Act, 2016".

9. In particular, the Act of 2016 defines 'Care-giver' as below:

2(d). "care-giver" means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability."

10. The Learned counsel for respondents submitted that the Transfer Order had already been upheld in the earlier orders of this Tribunal in OA No. 247/2017 and the impugned orders related to the aspect of

personal hardship alone for which the applicant had been directed to file a representation. While arguing that the Competent Authority had the requisite power in the absence of any Committee, they also stated that the applicant having completed nearly 30 years at the same place, he had developed a vested interest and the rulings in **T.S.R. Subramanian (supra)** would not apply.

11. Learned counsel for the applicant was enquired on how malafides had now been alleged against the respondent No.4 who is the Director General, Civil Aviation(R-2) but in the earlier OA, the Assistant Director, BCAS Mumbai who was respondent No.4 in that OA had been charged with malafides. Further, not only were no malafides urged at that point in time against the Competent Authority, no request had been made for an independent Committee or other person and only medical conditions had been emphasized. Learned counsel for applicant emphasized his arguments on the need for medical facilities, the necessity and

importance of the care-giver and the need for a suitable environment for the disabled child which had not been considered in the impugned orders of respondents. He also stated that they had filed a Writ Petition No. 3917/2017 in High Court of Bombay.

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

13. The respondents have admitted that there is no Transfer/Placement Committee established in their office in consequence of the judgment of the Hon'ble Apex Court in ***T.S.R. Subramanian (supra)*** and subsequent OMs of the DoPT. In the absence of such institutional creation as advised in the judgment and later OM of DoP&T, the available institution of the Director General, who is the Competent Authority and Appointing Authority for categories such as the applicant, has evidently the power to consider and pass such Transfer Orders. It

is also evident from the submissions of parties that the respondents are creating twenty new Regional Offices by expansion from the existing nine and each Regional Director, irrespective of his rank, would get a Stenographer Grade-D, the lowest and entry grade of Stenographer in the organization. The respondents have also urged that they are faced with a situation with no clerks available at Ahmedabad and therefore, they took the administrative decision for posting the applicant, who had considerable experience, to directly assist the Regional Director, Ahmedabad. It is evident that the choice of making a selection between a Stenographer and the available clerks in Mumbai is an administrative decision and it cannot fall within the scope of this Tribunal for judicial review to determine what is appropriate for the administration in terms of its functioning. It is perhaps keeping in view this background, that the applicant has urged malafides. However, malafides were urged even at the occasion when the applicant

filed his earlier OA No. 247/2017 and in which he alleged malafides against an Assistant Director in BCAS, Mumbai and for which, this Tribunal held the Transfer Orders in order. In the present OA, he has turned his attention and allegations of malafides against the Director General, BCAS, New Delhi and has not explained how the malafides have now been transferred to the incumbent of that post in his personal capacity. While this clearly is an after-thought and deserves to be rejected prima facie to support a charge of malafide and interference by this Tribunal, the main arguments supporting the charge of malafide are that there is a dispute between the Director General, New Delhi and the Regional Director, Mumbai who are both Group-A Officers and far removed in terms of seniority from the applicant who assists in personal and stenography work at the Mumbai Regional Office. We have already dealt with the argument that malice can be attributed to selecting a Stenographer as against the available three Clerks at Mumbai

for transfer to Ahmedabad. In the absence of any useful grounds for malice for which a heavy burden of proof lies on the applicant in terms of judgments of the Hon'ble Apex Court ***in State of UP Vs. Gobardhan Lal [(2004) 11 SCC 402]***. It is apparent that the applicant has failed to provide any useful or credible evidence and this charge is, therefore, without basis. It is also clear that the transfer of the applicant has not affected his service conditions in any manner whatsoever. This leaves the issue of the result of directions contained in the last OA when the Transfer Orders were upheld and respondents were directed to consider the grievances of the applicant on grounds of personal hardship.

14. The applicant in his representation to the respondents had raised the following issues in support of his prayers on personal hardship as below:

"(i) That his daughter is suffering from mental disability and requires constant personal attention to perform her daily chores;

- (ii) That his wife is suffering from T.B. and requires medical attention;
- (iii) That his father is suffering from heart problems;
- (iv) That his mother is bed-ridden with hypertension and cellulitis;
- (v) That his son has broken his arm and had been bandaged."

15. The respondents have declined his request firstly, on the ground of administrative constraints that is mentioned as an exception in the OM dt. 06.06.2014 which is worded as below:

"xxx. 2. The matter has been examined. Rehabilitation is a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, and psychiatric or a social functional level. The support system comprises of preferred linguistic zone, school/academic level, administration, neighbours, tutors/special educators, friends, medical care including hospitals, therapists and doctors, etc. Thus, rehabilitation is a continuous process and creation of such support system takes years together.

xxx. Therefore, a Government servant who is also a care giver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints."

16. The argument set out is that

there is nobody at the Ahmedabad Office and therefore, they needed a person to be posted there. The second aspect is on the daughter's mental condition requiring support. While denying that they were previously aware of this issue, they state that the documents submitted by the applicant show that the daughter has been attending a regular school and is suffering from a mental disorder. They state that Ahmedabad is well equipped with all medical facilities including CGHS facilities. Further, they refer his representation which shows that his daughter requires more of personal attention to complete her daily chores and observed that such situation can be handled wherever the person and his family resides provided necessary medical facilities are available. For this purpose, they say that the applicant can take his family along to Ahmedabad and get accommodation or he would be entitled to House Rent Allowance to avail rental housing.

17. On this aspect, the applicant in his representation made to the respondents,

has described the disability of his daughter aged 11 years at Para 2a which comprises one of his six grounds of personal hardship and this is reproduced below:

"2a. My daughter, "Soumya 8. Devadiga' aged 11 years had suffered epileptic attacks twice when she was 5 and 6 years old which resulted in developmental delays and was under the care of Dr. Ravindra Chittal who referred her for undergoing certain tests. (Copy of the EEG Test report is enclosed as Annexure-B). Even after 11 years, she is unable to speak, read and write properly. She cannot understand verbal instructions and has to be repeatedly called for getting attention. She has to be escorted even while going to the toilet. Daily routine functions like having bath, brushing her teeth, putting clothes and food intake she cannot do on her own without the help of others. Being a female child I have to take extreme care of her. One person has to continuously look after her. At academic level, instead of branding her as mentally challenged by admitting her in a Special School, I was advised to impart her education in inclusive set-up. Accordingly, she is taking education in Indian Education Society (IES) New English School, Bandra (East), Mumbai where special educators have formed a bond with my daughter for giving her education in inclusive set-up with personalized attention. In the academic result for the A.Y 2016-17, declared on 24.4.2017, my daughter was promoted to higher grade on medical grounds. (Copy of Mark sheet dated 28.4.2017 is enclosed as Annexure-C). The IES New English School had asked me to get a certificate from Nair Hospital, Mumbai regarding her mental condition. Accordingly, Nair

Hospital, Mumbai after certain IQ tests, speech tests and other tests w.e.f 11.7.2015 to 21.3.2016 issued an opinion certificate on 21.3.2016 as 'Borderline Intellectual Functioning' (Copy of the certificate issued by Nair Hospital, Mumbai is enclosed as Annexure-D). Besides, due to fever, increased frequency of forgetfulness and slow response on verbal instructions she was examined by the doctors of Saifee Hospital on 26.4.2017 (Copy of the certificate issued by Saifee Hospital is enclosed as Annexure-E). Further, she was referred to Sir JJ. Hospital for further IQ tests on 30.5.2017. She had undergone tests on IQ, occupational tests and certain other tests in which her IQ level was rated at 53 which was clearly a case of 'Mental Retardation' (Certificate issued by the Government of Maharashtra for Mental Retardation is enclosed as Annexure-F). The D.O.P.T. O.M dated 6.6.2014 and 17.11.2014 grants special protection to Government employee who has 'disabled child, from routine exercise of transfer/rotational transfer (Copy of D.O.P.T O.M dated 6.6.2017 and 17.11.2017 is enclosed as Annexure-G). During the interim period from April, 2016 to March, 2017, the IQ level of my daughter had come down due to lack of therapy and treatment. The school authorities had advised for immediate treatment otherwise they won't allow her to continue in the school. Hence, I was forced to undergo private treatment. My daughter is presently undergoing speech therapy, occupational therapy and physiotherapy at Nair Hospital."

18. In the grounds mentioned in his application, he has stated:

"g) The daughter of the applicant is mentally challenged/disabled and she is taking regular treatment from the

Hospitals in Mumbai. Such Special Treatment is not available in Ahmedabad and the chance of place may affect her health treatment tremendously.

h) Many Honorary Doctors who are specialized to treat the disease from which the daughter of the Applicant is suffering are available in Mumbai and are attached to various Hospitals.

i) The Respondents being a welfare state cannot turn a blind eye towards the daughter of the Applicant and it is the duty of the Administration to help and take into consideration the difficulty which the Applicant is facing. The impugned order dated 30.06.2017 has been passed in a Mechanically and illogical manner even without explaining the possibility to transfer anyone else to Ahmedabad.

j) There is no other person available in Mumbai to look after the family of the Applicant and especially the daughter.

k) It is neither in the interest of the Applicant or the Respondents administration to transfer the Applicant from Mumbai as his daughter is acclimatized and is habituated to the present surrounding."

19. For ground 'j', he has not reiterated but evidently refers to his argument made in the representation to the respondents that his wife was suffering from Tuberculosis as diagnosed in 2015 and is under medical treatment; further, that she suffers from chronic hypertension and Asthma and is unable to do household duties and look after the children.

20. On the above aspects, it is apparent that the main issue posed by the applicant is with reference to his daughter's mental disability. The applicant's other reasons of medical issues with his parents, wife and son are routine or manageable medical events for any family and it cannot be denied that such medical attention is fully available at Ahmedabad. The certificates provided by the applicant in regard to his daughter's mental disability show:

a) Sir JJ Group of Hospitals and Grant Government Medical College, Mumbai dt. 06.05.2017: Mental Retardation - Mild - IQ=53
Mild Mental Retardation with disability of 50%. Further, the above condition is Permanent, non-progressive, not likely to improve.

b) Dr. Y.A. Matcheswalla, Sir JJ Group of Hospitals/Private dt. 07.07.2017: Obtained subsequent to representation and states that she is under treatment for one year and suffers from Mental Retardation along with

Behavioural problems & Irritable Bowel Syndrome. Further, she is under special therapies for which she must live in Mumbai for regular treatment & follow-ups.

c) B.Y.L. Nair CH. Hospital (MCGM) dt. 21.03.2016: Was treated as Out Patient from 11.07.2015 to date of opinion certificate and suffering from Borderline Intellectual Functioning.

21. The available certificates produced by the applicant and enclosed with this application show that treatment was being given as an Out-Patient from 11.07.2015 onwards. They also suggest that his daughter's Mild Mental Retardation was permanent and non-progressive. Even the therapies proposed by a psychiatrist for which he require her to live in Bombay were based on his observations for barely one year. As mentioned by the respondents, the description of the problem of his child as set out in the applicant's representation, show lower Intellectual Functioning, forgetfulness, slow response and a compulsion

made by the school authorities for her treatment which had come to his notice from 2016. It is also true that although his parents have Geriatric problems and his wife is under medical treatment for Tuberculosis, they are not incapacitated from being caregivers to his daughter and it could be possible for them to take her for medical observation when required. As pointed out by the respondents, the applicant's daughter has been attending regular school although she has been suffering from mental disorder. They have also observed that his daughter requires personal attention for her daily chores for which the entire family is available.

22. In the OA No. 2233/2017 & 2236/2017 decided by the Principal Bench of this Tribunal on 08.02.2018, the child had been suffering from Autism Spectrum Disorder which is a very complex syndrome that impairs social interaction, developmental language, communication skills along with rigid and repetitive behaviour. Moreover, in that

case, the mother was afflicted by Acute Obsessive-Compulsive Disorder and Schizophrenia over the previous 10 years. In the circumstances, the husband became a full care-giver in the absence of any other member of the family in addition to the disability of the wife. The orders quashing the transfer therefore arose in entirely different circumstances.

23. We have taken note of all the submissions made by the applicant before the respondents and this Tribunal, as extracted above, and have considered the clauses of the Disability Act and the provisions for consideration of a care-giver of a mentally challenged child as set out in the Act and the OM issued by the DoP&T. The manner in which the applicant has described the circumstances and condition of his disabled child show that the child continues to study at a normal school and is only assisted by Psychiatric consultation at the Nair Hospital and perhaps, at various private clinics. This is in addition to attention at home.

The applicant has made no effort to establish how he has become a care-giver of a mentally challenged child whose learning abilities require not only an environment conducive to such learning but also the company of a person or the care-giver that the child can trust along with the tutor or assisting counselor in a special school or a normal school, if available. He has also not explained nor has he made any attempt to explain at any opportunity either before the respondents or before this Tribunal in his submissions how he has managed to juggle his office work and timings with this alleged responsibility of a care-giver of a mentally challenged child whose fact of mental challenge was only discovered in 2015 when the child was nine years old. In the circumstances, the unsupported and vague submissions of the applicant that he alone is the care-giver of the mentally challenged child are not believable. Combined with the fact that his wife was under treatment for detected Tuberculosis way back in 2015 and

that the only other arguments mentioned are the usual, routine ones of hypertension etc., it is apparent that either the claim that the applicant is the care-giver is not genuine or at the other extreme, the respondents' conclusion that the child only needs support for her personal chores is valid. In either event, there is no evidence in support of the exemption claimed by the applicant under the provisions of the Disability Act and Government orders.

24. Further, viewed in balance between the administrative constraints of the rather small offices of the respondents distributed at various Airports and the personal constraints of individual staff, the view taken by the Competent Authority to deny the request of the applicant to reiterate implementation of the transfer orders as already upheld by this Tribunal appears to be quite reasonable.

25. Of course, it is entirely possible for the applicant to consider all aspects of the situation of his disabled

daughter and to make a representation with available facts in a transparent and substantiated manner for the indulgence of the respondents. In the event that he does require relocation to his original station at Mumbai or if he needs his family including his wife and daughter to remain at Mumbai while he is stationed at the transferred station, this would be at the discretion of the respondents to consider based on proper and reliable facts and its appreciation.

26. In the circumstances, this OA is dismissed with the above observations, and without any order as to costs. Interim orders, previously granted and continuing, stand vacated.

(R.N. Singh)
Member (J)

(R.Vijaykumar)
Member (A)

Ram.