

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

MA/310/00068/2018 in & OA/310/01770/2017

Dated the 31st day of July, Two Thousand Eighteen

CORAM

HON'BLE MS. BIDISHA BANERJEE, Member(J)

&

HON'BLE MS. B. BHAMATHI, Member (A)

R.Kannan,
S/o (late) S.M.Raju,
Asst. Engineer (QA),
Senior Quality Assurance Estt. (Armts),
Residing at M-160, TNUDP,
Anna Nagar, Trichy 620026.Applicant/Respondent

By Advocate M/s. N. Vanaraj

Vs

- 1.Union of India,
rep by its Secretary,
Ministry of Defence,
Room no. 101-A, South Block,
New Delhi 110011.
- 2.The Director General,
Director General of Quality Assurance,
Dept. of Defence Production,
Room no. 308-A, D-1 Wing,
Sena Bhavan,
New Delhi 110011.
- 3.Additional DGQA (A),
Director General of Quality Assurance (Armts)
Room no. 140, H Block,
HQ DGQA, Nirman Bhavan PO,
New Delhi 110011.
- 4.Controller,
Controllorate of Quality Assurance (Small Arms),

PO, Ichapur-Nawabganj, North 24 Parganas,
West Bengal 743144.

5.SQAO,
Senior Quality Assurance Establishment (A),
Trichy 620016.

6.SQAO,
Senior of Quality Assurance Establishment (A)
Ichapur, West Bengal.

....Respondents/Applicants

By Advocate Mr. M. Kishore Kumar

Reserved on 07.06.2018

Pronounced on 31.07.2018

ORDER

(Pronounced by Hon'ble Smt. B. Bhamathi, Member(A))

The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- “i. To call for the records relating to order No. S/1265/2/RT/2017-18/DGQA/Arm-1 dated 17.07.2017 in so far as it relates to the applicant and No. S/1265/2/RT/2017-18/DGQA/Arm-1, dated 01.11.2017 passed by the 2nd respondent and to quash the same with all consequential benefits.
- ii. To award costs, and pass such further and other orders as may be deemed and proper and thus render justice.”

2. It is submitted that the applicant after serving for nearly 20 years in the IAF since 1982 which involved staying in hard areas, applicant joined the OFT in 2002 at Trichy as Examiner (semi-skilled). He had been discharged from IAF on 30.11.2002. Again he resigned from OFT, Trichy on 14.02.2005 and joined R2 on 15.02.2005 as Chargeman, Gr-2 which was later redesignated as Junior Engineer (QA) w.e.f. 01.01.2006. He was promoted as Assistant Engineer (QA) w.e.f 06.12.2012 and he is now left with 6 years of service for superannuation on the date of filing this OA.

2.1. The applicant's wife is a qualified Trained Graduate Teacher (TGT) in the Government of Tamil Nadu and was appointed in the year 2010 at the age of 45 and posted at Nariyapatti, Pudukkottai district of Tamil Nadu. The applicant relies on the DoPT OM of 30.09.2009 regarding transfer policy with respect to posting of

husband and wife at the same station. Para 4(vii) reads as follows:-

“Where one spouse is employed under the Central Government and the other spouse is employed under the State Govt.: - The spouse employed under the Central Govt. may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted.”

2.2. In anticipation of possible transfer, he filed a representation dated 13.03.2017 and followed it up with another representation dated 24.07.2017 seeking exemption from rotational transfer on the ground of his wife's employment in Tamil Nadu Government and also on account of her medical condition and the education of her son. The transfer policy of the respondents' organisation dated 24.11.2016 in respect of Group B officials on DGQA also takes into consideration the OM dated 30.09.2009 regulating the RTP. The representation of the applicant was forwarded from the 5th respondent to first respondent but no orders were passed. However, the 3rd respondent without considering the request of the applicant notified the list of officers who are in the purview of rotational policy vide order dated 11.04.2017 by which all due for posting, and within the purview of RTP, in the year 2017-18, including the applicant, were called upon to file their choice of stations. The applicant gave the choices of Avadi, Medak and Ichapur, in that order of preference. The 5th respondent also in his communication dated 19.07.2017 had requested the 3rd respondent for retention of applicant at Trichy on administrative

grounds. But applicant was already transferred on 17.07.2017.

2.3. The applicant filed **OA 1543/2017** challenging the transfer order dated 17.07.2017. The respondents were directed to consider his representation and pass a speaking order on his request to accommodate him on the same station as his wife. It was also directed that status quo be maintained till orders are passed by the competent authority.

2.4. The 2nd respondent passed the impugned order dt. 01.11.2017 rejecting the representation taking shelter under the same guidelines which empowered the applicant to seek relief under those very guidelines. The impugned order dated 01.11.2017 is tainted with malafide as the 2nd respondent has shown that the applicant has served in the same station for the last 15 years from the date of initial appointment, as if the applicant has joined the 2nd respondent in 2002 whereas he joined R2 only in February 2005 at CFT, Trichy. If R-2 respondent had considered the previous employment, he should have also considered his early service with the IAF in which the applicant had undergone nine transfers in a period of 20 years. This action caused prejudice to the applicant.

2.5. Whereas, the transfer guidelines of the respondents read with OM of 30.09.2009 has been issued by the first respondent, the R2 and R3 respondents had failed to follow the same and hence there was

selective application of the policy in violation of Article 14 of the Constitution of India within the same organisation at different levels.

2.6. The applicant has not been relieved on the date of filing this OA. Apart from that, there was another vacancy in the office of 5th respondent in another post where the applicant could be accommodated or the applicant could have been transferred at Chennai in CQA, Avadi or DSC, Avadi where vacancies existed.

3. In the reply to the OA, it is admitted that the applicant is working in the office of R5 since 2005 and was due for transfer under RTP for the year 2016 and 2017. The 3rd respondent issued posting orders for the applicant to join R6. RTP is devised to acquire and share technical knowledge possessed by the employees for the benefit of the organisation. As per the RTP in respect of Group A and Group B officers, an official who has completed 7 years of service in the same station on a particular year would be transferred under RTP in another organisation for wider exposure of experience.

3.1. The applicant's station seniority being from 15.02.2005, he had completed 13 years of service and he was due for transfer under the RTP. The applicant also submitted choice of stations on 28.04.2018 in reply to the communication dated 21.04.2018 issued by the respondents following which posting order was issued by R3 as per recommendations of R4 posting the applicant to the office of R6.

Applicant's prayer to exempt him from the RTP on the grounds mentioned in the DoPT OM dated 30.09.2009 could not be considered since it may lead to ambiguity and unrest among those who were already working in Central / State Government.

3.2. The representation of the applicant dated 13.03.2017 and 24.04.2017 were forwarded to the office of R3 but the same could not be considered in view of the guidelines of the RTP. In any case, reasoned and speaking orders have been passed as per directions of the Tribunal in OA 1543/2017 considering the applicant's representation dated 24.04.2017 and it has been served on him on 25.11.2017. All the officials due for posting under RTP were brought under the purview of the transfer order during the year 2016-17, who were also having spouse posting under the State Government. Hence, the allegations of the applicant that the same has not been followed under the Vehicle discipline is not commented upon. The averments of the applicant that he may be accommodated in the office of 5th respondent, throwing to the winds the procedures and norms to be adopted while issuing the posting under the RTP, will defeat the very purpose of RTP.

3.3. Further, one Shri. Asim Sarkar, AEQA working under 3rd respondent has been posted in place of applicant. The person could not be posted due to non-movement of the applicant to Ichapur.

3.4. In the additional typeset filed by the learned counsel for

respondents, it is also submitted that the earlier RTP relevant to the applicant dated 20.05.2011 was revised by the order dated 24.11.2016.

The following amendments were inter-alia made vide RTP order dated 24.11.2016:

“a. No.A/96995/RTP/DGQA/Adm-7B/D(QA)/2016 dated 20 Dec 2016 wherein rotational transfers in respect of non-technical group 'B' officials were held in abeyance.

b. No. A/96995/RTP/DGQA/Adm-7B/D(QA)/2016 dated 10 feb 2017 making the following amendments to the order of 24 Nov 2016:-

I. Tenure in a post changed from 03 to 05 years.

II. The clause “the total cumulative tenure of any official in the same station shall not exceed 12 years in entire service career. Further, no official should be posted back to the same station within next 03 years of his transfer” (para 6) was deleted.

III. Cut-off date for calculating length of tenure at a station amended from 01 Jan to 01 July and date of posting list of officers due for RTP on DGQA website amended from Oct-Nov of the year to April-May of the year.

IV. The clause regarding givin preference to officials preferring same station for posting who are “retiring within a period of two years” was deleted.

V. Officials to be exempted from rotational transfer amended from “having 02 years or less service for superannuation” amended from 02 years to 03 years.

VI. The clause regarding consideration of request of an official for retention at a station amended to “maximum by 01 year each for maximum two children in class X or XII”.

3.5. The revised policy, as above, was clearly favourable only to Group D (Technical & Scientific) staff. The applicant and other employees were also fully aware of their All India Service liability clause contained in the offer of appointment while accepting

appointment. At no stage they can claim undue exemption from such liability.

3.6. The All India transfer policy / orders have been a subject matter of litigation before the Tribunal. The CAT-Bangalore Bench in **OA 150/2017** by the All India DGQA Engineers Association prayed for stay of the posting order. Vide order dated 05.05.2017, the Bangalore Bench of the Tribunal disposed of the case with a direction that the respondents should differentiate between sensitive and non-sensitive posts in accordance with the Ministry's instructions and their own transfer policy. The orders were promptly complied with by issuing the order dated 19.05.2017 by defining the posts as sensitive or otherwise.

3.7. Three other court cases were filed before other Benches of the Tribunal. In **OA 1310/2017 (Gautam Singh Vs. UOI & ors)** before CAT-Principal Bench, this matter was dismissed in favour of the respondents vide order dated 25.04.2017 while imposing a cost of Rs. 25,000/- on the applicant. **OA 1339/2017 (Pawan Jindal Vs. UOI & ors)** filed before CAT-Principal Bench was also similarly dismissed in favour of the respondents vide order dated 25.04.2017 and imposing a cost of Rs. 10,000/- on the applicant. In **OA 516/2016 (Smt. Uma Kanaja Vs. UOI and ors)** filed before CAT-Allahabad Bench against her posting / transfer, the OA was dismissed in favour of the

respondents vide order date 04.05.2017 relying upon the said law of the Hon'ble Apex Court in **S.C. Saxena Vs. UOI [(2006) 9 SCC 583]**, **State of UP Vs. Siya Ram and others [AIR 2004 SC 4121]**, **Shilpi Bose and others Vs. State of Bihar [AIR 1991 SC 532]**. The Bangalore Bench of the Tribunal initially granted the stay in **OAs 320/2017, 322/2017 & 364/2017** and after hearing the cases in detail dismissed the three OAs on 17.10.2017. The applicants filed **WP No. 48428-48431/2017** before the Hon'ble Karnataka High Court and no stay was granted.

3.8. Based on the order of Bangalore Bench of the CAT, this Bench granted stay in **OA 1377 and 1405/2017** and subsequently in both the cases, interim stay was vacated on 02.11.2017 in **MA 760 & 761/2017**.

4. The applicant on the other hand relies upon the orders of the CAT-Allahabad Bench restraining the respondents from giving effect to the transfer orders in so far as it related to the applicants in **OA 1009/2017**. Similarly, he also relied upon the order of the CAT-Principal Bench, New Delhi in **OA 2791/2017** dated 19.08.2017 wherein the transfer policy and subsequent amendments had been challenged relying upon an order of the Bangalore Bench of the Tribunal and an order of the Mumbai Bench of the Tribunal staying the transfer of the applicants in **OA 486/2017** vide order dated

14.08.2017 and order in **OA 875/2017** of the CAT-Allahabad Bench staying transfer policy. Hence, in **OA 2791/2017** also, the transfer policy was kept in abeyance. In this way, interim relief continued in this case till February 2018 as per orders of the various Benches of the Tribunal. However, the applicant has also placed on record, the order in **OA 364/2017** dated 21.09.2017 of CAT-Bangalore Bench whereby the interim orders in **OA 320/2017, 360/2017 and 364/2017** stood vacated.

5. The respondents were pressing for vacation of stay order and also wanted early hearing in this case despite delay in production of original documents. This Tribunal sought information and production of original records vide order dated 16.02.2018, 08.03.2018, 09.03.2018, 20.03.2018, 28.03.2018 and 20.04.2018. Finally, certain documents were kept in sealed cover was brought to the Tribunal. After seeking permission of the Tribunal to submit copies of the original records since original records were required for production in other courts where similar matters are pending, without opening the sealed cover, the Tribunal directed the respondents to file the records before Registrar. The sealed cover was opened by Registrar on 07.06.2018 and the photocopies were placed on record. The case was then finally heard along with MA 68/2018 praying for vacation of stay.

6. Heard the learned counsels and perused the records.
7. It is settled law that transfer being an incidence of service is not to be interfered with by the Courts, unless it is shown to be clearly arbitrary or arising from malafides or infraction of any professed norms or principles governing transfer. It is for the employer to decide when and where and at what point of time a public servant is transferred from his present posting.
8. Undoubtedly, transfer is an incidence of service condition but also an essential condition of service. It cannot be disputed that the applicant had all India transfer liability. It is also settled law that the order of transfer should be normally not be countenanced by the Tribunal as though the Tribunal is an appellate authority over such orders as this would involve adjudication of facts, which the Tribunal is not legally liable to go into. However, it is also settled law that if an order is shown to be an outcome of a malafide exercise of authority or in violation of policy/statutory provisions, or if it is done as a punitive measure or if it is done in violation of principles of natural justice, then Courts are bound to go into these aspects, notwithstanding the fact that orders of transfer can be passed in administrative exigencies. Then such a case can come within the purview of Tribunal's interference.
9. The main question that engaged the Tribunal's attention while

considering MA for stay vacation was the need for the department to clarify whether any consideration was given to the first two choices of places of transfer given by applicant before considering the basis of the transfer to the third choice of place ie., Ichapur and whether it was on the ground of absence in vacancies in Avadi and Medak that he was posted to Ichapur. The Tribunal considered that the choice given by the officers including the applicant was not an empty formality. The Tribunal finds that this aspect has not been considered or explained in the impugned order. Therefore, the documents and relevant additional information was called for to consider the above issue.

10. Appendix C of the DGQA communication of 11.04.2017 was produced before the Tribunal on 09.03.2018 on a direction by the Tribunal. The vacancies commonly pertained to the list of 11 offices. The same is extracted below:

“ **Appendix “C”**
Officers under the purview Small Arms Discipline SP No, 2 (AsHSP COA (SA) Ichapur)

(a) Officers having completed minimum 07 years of service at Station

| Sl. No. | Name of Establishment | Name | Designation | Date of Birth |
|---------|-----------------------|-----------------------|-------------|---------------|
| 1 | CQA(SA), Ichapur | Shri S. Baraik | AE(QA) | 04/05/64 |
| 2 | CQA(SA), Ichapur | Shri Ranjan Kr Biswas | AE(QA) | 12/10/68 |
| 3 | CQA(SA), Ichapur | Shri Sujoy Kr Saha | AE(QA) | 01/12/68 |
| 4 | CQA(SA), Ichapur | Shri Asim Sarkar | AE(QA) | 11/20/75 |

| | | | | |
|----|-------------------|----------------------|--------|----------|
| 5 | CQA(SA), Ichapur | Shri Avik Mukherjee | AE(QA) | 12/07/78 |
| 6 | SQAE(SA), Ichapur | Shri Rajesh Basak | AE(QA) | 12/29/72 |
| 7 | SQAE(SA), Ichapur | Kum Soma Biswas | AE(QA) | 01/15/70 |
| 8 | SQAE(SA), Ichapur | Shri M Kumar | AE(QA) | 09/28/73 |
| 9 | SQAE(SA), Ichapur | Shri Pinaki Saha | AE(QA) | 11/20/76 |
| 10 | SQAE(SA), Kanpur | Shri A K Srivastava | AE(QA) | 05/16/62 |
| 11 | SQAE(A), Trichy | Shri R Kannan | AE(QA) | 04/13/64 |

Vacancy Position in various establishment under Small Arms Discipline : AE

(OA)s and JE(OA)s

| Sl. No. | Establishment | Existing vacancy | *Anticipated vacancy due to retirement | Anticipated vacancy due to RTS |
|-----------|--------------------------|------------------|--|--------------------------------|
| 1 | CQA(SA), Ichapur | 7 | 2 | 5 |
| 2 | SQAE(SA), Ichapur | 6 | 2 | 4 |
| 3 | SQAE(SA) Kanpur | 0 | 3 | 1 |
| 4 | SQAE(SA)Trichy | 1 | 3 | 1 |
| 5 | HQ DQA(A) New Delhi | 0 | 0 | 0 |
| 6 | SQAE(A) Hastings | 2 | 0 | 0 |
| 7 | SQAE(A) Chennai | 0 | 0 | 0 |
| 8 | CQA(AVA) Avadi | 1 | 0 | 0 |
| 9 | SQAE(A) Khamaria | 0 | 0 | 0 |
| 10 | CQA(A) Pune | 0 | 0 | 0 |
| 11 | SQAE(A) Delhi Cantt | 0 | 0 | 0 |
| 12 | SQAE(A) Sec'bad | 0 | 0 | 0 |
| 13 | SQAE(A) Medak | 0 | 1 | 0 |
| 14 | SQAE(A) Ambajhari | 0 | 0 | 0 |

*The posting against anticipated vacancies will be issued as and when arises. ”

11. It is clear from the above that on 11.04.2017 that applicant and others had been called upon to file their three choice of stations as per the vacancies notified in the above Appendix C on website, whether it

was CQA(AVA) or SQA(A). Vacancies in both categories were relevant for applicant's case. It was on this basis that the applicant chose Avadi at serial no. 8 as his first choice, Medak at sr. no. 13 as his 2nd choice and Ichapur at Sr. no. 2 as his 3rd choice. It is clarified by both counsels that there is no hard station in the list. It is also stated that the posting against anticipated vacancies will be issued as and when the vacancy arises. The above vacancy was also posted on the website and choices were called for. On that basis, it is claimed, that transfers were ordered.

12. Appendix E of the letter dated 11.04.2017 contains conditions as follows:

“

Appendix “E”

- (a) The individuals having completed 07 years of service should submit three choice stations through their HOE to their respective AHSP within 30 days from the date of uploading of this letters on DGQA website as per the policy.
- (b) The individuals posted at hard station, as mentioned above and having completed 03 years of services but not more than 07 years as on 01.07.2017 should give three choice stations thorough their HOE to the respective AsHSP. Their postings may be considered in accordance with para 9(b) of the policy. Such individuals, if desirous of continuing at the same hard station may include the same as one of their three choice stations.
- (c) In case more than one official prefer same station for posting and adequate vacancies are not available to accommodate all of them, the official posted on hard station, if any, shall be given preference and there after the official who has served for lesser number of years at the station, where posting is to be made, will be considered.
- (d) However, notwithstanding the para(c) above, to meet the organisational requirements, the posting of individuals serving at hard station and giving option for posting, may be considered for other non-hard establishment/stations in case vacancies are not available at their choice station.

(e) In accordance with DGQA/Ad,-7B letter no.A/90600/RTP/DGQA/Adm-7B dated 15 Mar 2017 the available vacancies at the station will be filled up by compassionate posting prior to rotational transfer. However, the grounds for posting on compassionate ground, as stipulated in the MoD letter No. A/96995/RTP/DGQA/Adm-7B/D(QA)/2016 dated 24 Nov 2016 and A/96995/RTP/DGQA/Adm-7B/D(QA)/2016 dated 10 Feb 2017 will only be considered. Request for posting on compassionate ground duly recommended by the HOE may be forwarded through AHSP latest by 15 May 2017.

(f) As per MoD letter No. A/96995/RTP/DGQA/Adm-7B/D(QA)/2016 dated 24 Nov 2016 and A/96995/RTP/DGQA/Adm-7B/D(QA)/2016 dated 10 Feb 2017 and official can avail posting on compassionate ground only once during his entire career. Case has already been taken up with HQ DGQA(Adm), whether posting availed on compassionate grounds, in the past, is to be counted against that permissible, as per the latest ibid MoD policy dated 24 Nov 2016.

(g) The individual desirous of exemption as per the policy may also apply through their HOE and respective AHSP.”

13. However, since the questions raised by the Tribunal and reflected at para 9 of the order was not answered on 19.03.2018, an additional affidavit was filed by the respondents containing certain communications relied upon by respondents. The communication dated 21.02.2018 stated as follows:

“2. Due consideration was given to meet the aspiration of Shri R. Kannan AE(QA) at his first and second choice of posting. However, there was no vacancy of AE(QA) of SA Discipline exists at CQA (AVA) Avadi and SQAE(A) Medak nor likelihood of new vacancy till Mar 2018, hence, the applicant has been posted to SQAE(SA) Ichapur under RTP at his third choice of station.”

This communication was contrary to the website information that one vacancy was available at CQA(Avadi).

14. On the same date, another communication dated 21.02.2018 is also placed on record at R7 which reads as follows:

“2. The vacancy position of AE(QA) in respect of CQA(AVA) and AQAE(A), Medak is as under:

| Sl. No | Establishment | Auth Strength | Held Strength | Vacancy | Remarks |
|--------|-----------------|---------------|---------------|---------|---|
| a | CQA(AVA), Avadi | 3 | 3 | Nil | 1. Sh. S. Kumaraguru : Posted on - 01.06.2013 2.Sh. S. B. Barua : Posted on -26.04.2014 3.Sh Amil Marick, Posted on -12.04.2015 |
| B | SQAE(A) Medak | 2 | 2 | Nil | 1.Sh Sanathan Khalko : Posted on -24.06.2006 2.Sh. Jogindra Dutta : Posted on – 10.05.2014 |

”

15. A further communication dated 14.03.2018 containing the following communication was issued:

“2. In this connection it is intimated that one (01) existing vacancy of AE(QA) of Small Arm Discipline was shown at CQA(AVA) Avadi erroneously due to clerical mistake. It is also confirmed that on realizing this clerical mistake, in the final posting proposal duly approved by Board of Officers, **no AE(QA) of Small Arm discipline was posted to CQA(A) Avadi during the year 2017-18.**

3. It is further submitted that choice of station for planning of RTS is being obtained from the individual who fall under RTP to accommodate them to the extent possible. However it should not be taken as right by the individual that he will invariably get the choice of station offered by him. Posting of the individuals under RTS is carried out after due deliberation by a Board of Officers keeping in mind the interest of organization and aspiration of the affected individual.”

16. It is evident from the above that absence of vacancy at CQA(AVA), Avadi shown in letter dt. 11.04.2017 was considered (prospectively) to be a clerical mistake. To the specific query of the

Tribunal as to whether the Appendix C containing the vacancy position at Avadi/Medak put out on the website was subsequently corrected and when this mistake was detected is not answered by the learned counsel for respondents with supporting documents. Clearly, no corrective action was taken at the relevant point in time or till the Tribunal repeatedly raised these queries in the course of several dates of oral hearing in this matter on MA for stay vacation. The Tribunal insisted on production of original records, which also was being scrupulously avoided by the respondents. The perusal of the 'so called' copies of the original records filed in sealed cover was finally made available when final arguments commenced in both MA and OA. The photo copies containing the Board proceedings for compassionate and rotational transfers from February and June 2017, does not show how vacancies were arrived at / notified on website and how and when the clerical mistake was discovered.

17. It is not in dispute that applicant sought retention at Trichy on the basis of DoPT OM of 2009 which envisages that where one spouse is employed under the Central Government and the other under State Government, the spouse employed under the Central Government may apply to the competent authority and the competent authority may post the officer at that station and if there is no post at that station, then post him/her to the state where other spouse is posted. In this case, the

applicant submitted his representation well before the rotational transfer proposals came up for consideration. The right course of action would have been to accept or reject applicant's prayer for being posted at the same place on the ground that this ground is not covered/ or is exempted under RTP. The applicant's 2nd representation dt. 24.04.2017 after the communication on 11.04.2017 seeking choices from applicant (and others) was also not responded to and the final impugned order was issued on 17.07.2017. Without deciding the applicability of the DoPT OM (DoPT is the nodal Department on personnel matter, including transfer, as per Allocation of Business Rules) vis-a-vis the Department's RTP and without granting due opportunity to the applicant to be responded to, the applicant's case was rejected. This amounts to not granting due opportunity to applicant before rejection. It is true that seeking posting at the same place as per DoPT OM of 2009 was not specifically listed in the clause 10 of the RTP as being exempted from the operation of RTP. But, since a vacancy was shown to be available on the website at Avadi and the applicant was not responded to on both his representations, the applicant entertained some hope that he could be accommodated at Trichy which is not an illegitimate expectation since the DoPT OM of 2009, containing a policy provisions applicable to all Departments of Government could not have been overlooked

without considering the representations before passing the transfer order. There were five vacancies, in all, at Trichy. A speaking order considering both the representation should have been passed, before effecting transfer. If that was done, no violation of principles of natural justice could have been considered to have occurred.

18. However, even though his representations were not replied to applicant had accepted transfer outside of Trichy, where his wife was posted, as inevitable and in adherence to the letter of 11.04.2017 seeking three choices, the applicant seeing that there was a vacancy at Avadi made Avadi his 1st choice. If he could not be posted at Trichy, the next best choice was to be in the same State, where vacancy was available as per website, if not same place as per DoPT OM. So his first option was to stay in Tamil Nadu, seek Avadi and not insist on staying at Trichy itself, even when, there was one existing vacancy at Trichy and five other vacancies in the categories of anticipated vacancies. Even then, the applicant chose Avadi, accepting that his transfer from Trichy was unavoidable.

19. In this backdrop, since the respondents themselves sought 3 choices of posting and since website showed one vacancy at Avadi and relying on DoPT OM, he gave his order of preference, the 1st preference being within the state at Avadi than at Trichy. There is no indication that the applicant's 1st two choices were considered, and in

the absence of vacancy ie., wrongly declared vacancy at Avadi, to start with, that he was posted at Ichapur.

20. The choices given by the applicant should have been considered in the order of preference given by the applicant since, it was a conscious policy decision on the part of the respondents themselves to have sought three choices and therefore seeking such choices was not an empty formality. Hence, examination of choices with reference to vacancies was liable to be done and skipping the order of preference was not legally permissible. Going by the facts and circumstances on record, there is nothing to show that no vacancy existed at Avadi when applicant's case of transfer was considered. There is also nothing on record to show there were other eligible contenders for that position. Hence, the moment respondents detected that there was a clerical error, the website information should have been corrected. There is nothing in the reply to OA to show that it was a clerical error. It is only after the Tribunal persisted in probing the matter raised at para 9 of this order and sought original documents to see what actually transpired, that the clerical error is admitted with documents and that too in the course of oral hearing. This information was suo-moto suppressed from the reply to the OA. In this view of the Tribunal, the applicant had a right to know that he could not be considered for Avadi, in view of the clerical error. That was against the principles of

natural justice. Firstly, his representation was never answered. Secondly, if there was a vacancy and applicant decided to forego Trichy and opt for Chennai in the light of the policy decision to seek choices, which was not an empty formality, the applicant had the right to be told that because of clerical error he cannot be considered against a non-existing vacancy. The website continued to show one vacancy and was never corrected. It is in these opaque circumstances that applicant was transferred to Ichapur. Here, it is reiterated that it is not the factum of transfer to Ichapur, where more vacancies than at Avadi or Medak were available that is being interfered with. But the manner in which the transfer has been carried out warrants interference of the Tribunal. The judgments relied upon by the respondents are therefore distinguishable from the facts, circumstances and law points arising in this OA.

21. We are also liable to observe that none of the orders of the either Benches of this Tribunal relied upon by the respondents covers the facts and circumstances of the present case in the light of the foregoing discussions governing the facts and circumstances of applicant's case in this OA. In view of the above, the impugned transfer order is liable to be interfered with and the same is quashed and set aside. However, this will not prevent the respondents from seeking fresh choice from the applicant in the next / forthcoming

round of transfers and posting the applicant on transfer from Trichy, in accordance with law and due procedures established under law, and in accordance with the observations / findings of the Tribunal in this OA. Accordingly, OA is allowed. Consequently, MA for vacation of stay stands disposed of. IR also stands vacated.

22. While parting with making the order, we are also constrained to observe that the respondents indulged in *suppressio veri* and *suggestio falsi* in the manner in which they got the case conducted before the Tribunal. We are constrained to observe that had the original documents been produced, the basis of the notification of Appendix C on 11.04.2017 showing vacancy at Avadi would have been clear. The sudden and alleged detection of non-availability of vacancy and the basis thereof at Avadi would also have been clear to the Tribunal. The respondents did not cooperate with the Tribunal in getting to the basic fact of the matter as it prevailed on records. The Board proceedings and three pages of note sheet produced by respondents were completely inadequate to explain the questions raised by the Tribunal. The facts were simply not made available to the Tribunal to justify their action. Further, the Tribunal found to its shock and dismay that the board proceedings enclosed in sealed cover was the very same documents that had already been provided by applicant at A18 in the additional typeset filed by applicant containing the portions of the

above Board proceedings relevant to the transfer of applicant.

23. Given our findings that the respondents failed to cooperate with the Tribunal by honestly providing the facts based on records and by indulging in suppression of facts, and suggesting falsities, the bonafide of respondents being questionable, we impose a cost of Rs. 10,000/- on the respondents payable to the Tamil Nadu State Legal Services Authority within a period of 10 days from the date of receipt of certified copy of this order.

(B.Bhamathi)
Member (A)

(Bidisha Banerjee)
Member(J)

31.07.2018

SKSI