

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 6082 OF 2016**

Acting Director, Central Institute  
for Research on Cotton Technology  
and anr.

.....Petitioners

V/s.

Koppaka Parleshwar and Ors.

.....Respondents

----

Mr. Meelan Topkar, Advocate for the petitioner.

Ms. Vaishali Y. Agane, Advocate for respondent no.1.

None for respondent no.2.

ALONGWITH

**WRIT PETITION NO. 6074 OF 2016**

Shri. Yogesh Ram Pathare

.....Petitioner

V/s.

Koppaka Parleshwar and Ors.

.....Respondents

----

Ms. Ranjana Todankar, Advocate for the petitioner.

Ms. Vaishali Y. Agane, Advocate for respondent no.1.

None for respondent no.2.

**CORAM :-** **SMT. V.K. TAHILRAMANI, &**  
**SANDEEP K. SHINDE, JJ.**

**RESERVED ON :-** **12<sup>th</sup> June, 2017.**

**PRONOUNCED ON:-** **21<sup>st</sup> June, 2017.**

**ORAL JUDGMENT : (Per :- SANDEEP K. SHINDE, J)**

1. Both these petitions filed under Article 226 and 227 of the Constitution of India are directed against the order dated 8<sup>th</sup> February, 2016 passed by the Central Administrative Tribunal (CAT), Mumbai Bench, Mumbai in O.A. No. 297 of 2015. This O.A. was preferred by one, Mr. Parleshwar, eventually respondent no.1, in both the petitions. The CAT by judgment and order dated 8<sup>th</sup> February, 2016 allowed the said O.A. of respondent no.1 and order of transfer dated 29<sup>th</sup> May, 2016 issued by the Acting Director, Central Institute for Research on Cotton Technology (CIRCOT) was quashed and set aside and directions were issued to pass appropriate orders within 2 weeks.

2. Aggrieved by the said order, respondents

no.1 and 2 in O.A. No. 297 of 2015 have preferred Writ Petition No. 6082 of 2016 and respondent no.3 in O.A. No. 297 of 2015 has preferred Writ Petition No. 6074 of 2016.

3. Rule. Rule made returnable forthwith.  
Heard finally by consent.

4. Heard both sides.

5. The facts giving rise to these petitions to be stated in short are as under :-

. In June, 1984 vide appointment order dated 7<sup>th</sup> June, 1984 respondent no.1 was appointed as Lower Division Clerk at Bombay. Clause-4 of the appointment order, reflects that though his Headquarters will be at Bombay, he would be liable to serve in any Institute and/or Office of the Indian Council of Agriculture and Research located anywhere in India. Since his

appointment in June, 1984 he was serving in Mumbai throughout till the issuance of transfer order dated 29<sup>th</sup> May, 2015. The respondent was promoted and serving in Mumbai Office for about 31 years till 2015. On 29<sup>th</sup> May, 2015 respondent no.1 was transferred from CIRCOT, Mumbai to Ginning Training Centre (GTC), Nagpur on administrative ground and in the interest of public. At the relevant time, he was working as Assistant Administrative Officer, (A.A.O). By the very order, one Yogeshwar Pathare who is respondent no.2 in Writ Petition No. 6082 of 2016 and petitioner in Writ Petition No. 6074 of 2016, was directed to join and take charge of the post, CIRCOT, Head-Office- Mumbai and report immediately.

6. Aggrieved by the order of transfer dated 29<sup>th</sup> May, 2015 respondent no.1 in both the petitions had filed O.A. No. 297 of 2015 before the CAT, Mumbai Bench, Mumbai seeking relief to quash and set aside

the transfer order dated 29<sup>th</sup> May, 2015.

7. It appears Mr. Pathare, as well as, Mr. Parleshwar (original applicant) were relieved on the very date of the transfer and Pathare assumed the charge of the new office at Mumbai immediately on 30<sup>th</sup> May, 2015. In the course of the arguments, Mr. Topkar, the Learned Counsel for the petitioner, in Writ Petition No. 6082 of 2016 submitted that respondent no.1, Parleshwar had reported to Nagpur on new post, for a day and thereafter has not reported the office till date. It means, the transfer order has been acted upon by the respective parties. In other words, respondent no.3, Pathare, eventually the petitioner in Writ Petition No. 6074 of 2016 is working at Mumbai office for last more than two years.

8. The A.O. was resisted by respondents no.1 and 2 i.e. Acting Director, Central Institute for

Research on Cotton Technology and the Administrative Officer, Central Institute for Research on Cotton Technology by filing the affidavit-in-reply, contending that the services of Parleshwar are transferable anywhere in India. It was contended that Mr. Parleshwar, since his appointment in June, 1984 was in Mumbai and therefore he cannot make any grievance against the transfer order. In para-5 of the Affidavit-in-reply, it was contended that there are six posts of Assistant Administrative Officer of which five posts are in Mumbai and one post at Nagpur. That the office at Mumbai can be managed with four Administrative Officer against the five posts. That upon transfer of Mr. Parleshwar, from Mumbai to Nagpur and corresponding transfer of Mr. Y.R. Pathare- respondent no.2 herein, there would be four Administrative Officers working in Mumbai and one at Nagpur. It was contended that, transfer of Parleshwar is on administrative grounds and in public interests.

The respondents further contended that, there is only one post of Assistant Administrative Officer in Nagpur and it was necessary to have a experienced person like Mr. Parleshwar, to handle the work at the said post at Nagpur. That the administration can manage with four Assistant Administrative Officers at Mumbai against the five posts but Singular Post of Assistant Administrative Officer in Nagpur cannot be kept vacant.

9. The parties filed further pleadings in the form of rejoinder and sur-rejoinder.

10. The Learned Member, CAT after hearing the parties was pleased to allow the A.O. whereby the transfer order dated 29<sup>th</sup> May, 2015 was quashed and set aside and the respondents were directed to pass appropriate order within two weeks from the receipt of the copy of the order.

11. Aggrieved by the order dated 29<sup>th</sup> May, 2015, original respondents no.1 and 2 preferred Writ Petition No. 6082 of 2016 and Mr. Pathare-original respondent no.3 has preferred Writ Petition No. 6074 of 2016.

12. Heard the petitioners in both the petitions and learned Counsel for the respondent-original applicant, Mr. Parleshwar.

13. Perused the order and the relevant documents.

14. Mr. Topkar, the Learned Counsel for the petitioner appearing in Writ Petition No. 6082 of 2016 contended that the petitioner was serving in Mumbai Office for more than 31 years since his appointment and therefore he can't make any grievance about his transfer to Nagpur, which was on administrative

grounds and more so when his services are transferable. Mr. Topkar, further submitted, that an order of transfer is an administrative order. He submitted, transfer is ordinarily an incident of service and should not be interfered with, save and except, where inter-alia, malafides on the part of authority is proved. He further submitted, original applicant did not allege malafides, except, by saying he was transferred to Nagpur to accommodate respondent no.3. He would submit, the Learned Member committed error in exercise of jurisdiction by interfering with administrative order, in absence of malafides on the part of authority is proved.

15. That on the other hand, the Learned Counsel for the original applicant submitted, that the transfer order in question was issued to accommodate Mr. Pathare at Mumbai, at his request and as such there was no administrative exigency. She would contend

that, the transfer order was not in public interest.

. In the case in hand, Mr. Parleshwar-original applicant challenged the transfer order on following grounds :-

(i) it was a sudden transfer.

(ii) the transfer was made to accommodate, Mr. Pathare at Mumbai.

(iii) the transfer order was issued when the applicant was on leave.

(iv) that Mr. Pathare could have been accommodated on one post which was lying vacant at Mumbai.

(v) the transfer order was wrongful and without authority.

(vi) that it is not in public interest.

(vii) that it is untimely since his sons are studying at Mumbai and one son has passed an H.S.C. Board Examination in 2005.

(viii) that his mother is of 90 years old and there is no one to take care in the family, besides the applicant.

(ix)that the transfer order is illegal, arbitrary and unconstitutional.

16. It is not in dispute that, for last more than 31 years, Mr. Parleshwar, the original applicant was serving on various posts at Mumbai. It is not in dispute that, his services are transferable anywhere in India. That a transfer being an incident of service, it does not create any vested right in the employee to claim a posting at a particular place. The law on this issue is well-settled. In the case of **Rajendra Singh and Others. V/s. State of Uttar Pradesh And Others** reported in (2009) 15 SCC page 778, it was held :-

*“8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the*

*absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.”*

17. That even otherwise, transfer, ordinarily is an incidence of service and Court should be very reluctant to interfere in transfer orders, as long as, they are not clearly illegal. It is well settled that, transfer and posting, must be left to the discretion of State Authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation. The grounds urged by the applicant-respondent to challenge transfer order, even remotely do not indicate, that the order suffers from malafides or is vitiated by the violation of statutory provisions. The original applicant did not plead the material particulars to infer and hold malafides on the part of original respondents in issuance of transfer order or it is against some

statutory provisions.

18. Herein, Mr. Parleshwar, original applicant was serving in Mumbai since 1984. His services are transferable. He was working in Mumbai as Assistant Administrative Officer. On transfer of Mr. Pathare, a Singular Post of Administrative Officer at Nagpur was required to be filled in. It is for the reason, respondent no.1 was transferred to Nagpur from Mumbai first time in 31 years of service. That no malafides were alleged by Mr. Parleshwar on the part of petitioners, while passing the transfer order. He had not pleaded that the transfer was in violation of any Rule. That merely because Mr. Pathare has been transferred from Nagpur to Mumbai at his request and Mr. Parleshwar has been transferred to Nagpur, it cannot be said that the transfer order was passed to accommodate Mr. Pathare. Moreover, on the very next day, Mr. Pathare assumed the charge at Mumbai. It further appears

that, Mr. Parleshwar reported to the new place of posting for a day and thereafter has not reported the office till date. That Mr. Pathare is admittedly working in the new posting since last more than two years.

19. That for the aforesaid reason, both the petitions are allowed. In the result, order dated 8<sup>th</sup> February, 2016 passed by the Central Administrative Tribunal (CAT), Mumbai Bench, Mumbai in O.A. No. 297 of 2015 is quashed and set aside. Rule is made absolute in each of the petitions with no order as to costs.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)