

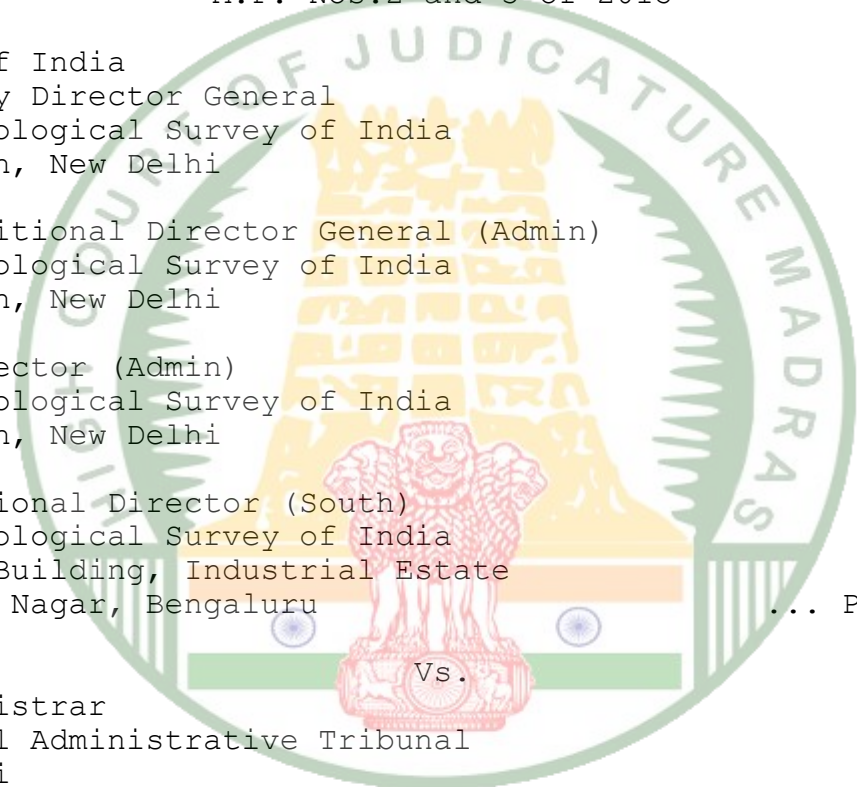
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR  
and  
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.28904 of 2015  
and  
M.P. Nos.2 and 3 of 2015

- 
- 1.Union of India  
Rep. by Director General  
Archaeological Survey of India  
Janpath, New Delhi
- 2.The Additional Director General (Admin)  
Archaeological Survey of India  
Janpath, New Delhi
- 3.The Director (Admin)  
Archaeological Survey of India  
Janpath, New Delhi
- 4.The Regional Director (South)  
Archaeological Survey of India  
KSIMC Building, Industrial Estate  
Rajaji Nagar, Bengaluru
- ... Petitioners
- Vs.
- 1.The Registrar  
Central Administrative Tribunal  
Chennai
- 2.Dr.G.Maheswari  
Superintending Archaeologist  
Archaeological Survey of India  
Temple Survey Project (South)  
Fort St. George, Chennai.
- 3.K.Lourdusamy
- ... Respondents
- सत्यमेव जयते
- WEB COPY

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records from the file of the first respondent made in O.A.No.310/00202/2015 dated 19.06.2015 and quash the same.

For Petitioners : Mr.Su.Srinivasan  
For Respondent 1 : Mr.Syed Mustafa  
For Respondent 2 : Ms.S.Devie

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to an order made in O.A.No.202 of 2015 dated 19.06.2015, by which, the Central Administrative Tribunal, Chennai, allowed the original application filed by the second respondent herein / applicant and set aside the order of transfer passed by the petitioners herein/respondents in the original application.

2. Second respondent herein/applicant in the original application, at the time of filing the said petition, was working as Superintending Archaeologist in Chennai Circle. She was originally appointed as Assistant Archaeologist (Group-B, Non-Gazetted) in May 1997 and posted at Hyderabad Circle, Andhra Pradesh. Subsequently, she was transferred to Chennai Circle in the same capacity in November 2001. Thereafter, in July 2003 she was promoted as Deputy Superintending Archaeologist (Group-A, Gazetted) after selection through Union Public Service Commission and posted at Bangalore Circle, Karnataka. She was once again transferred to Hyderabad Circle, in May 2005 and was further promoted as Superintending Archaeologist in July 2009 and was posted at Bhuvaneshwar, Odisha.

3. After serving in various places in different capacities, the applicant was once again transferred from Bhuvaneshwar, to Temple Survey project (South) Chennai, in January 2012. In October 2012, she was given additional charge of Chennai circle, apart from Temple Survey Project. In February 2013, she was regularly posted as Superintending Archaeologist in Chennai circle. Throughout her career, the applicant has been discharging her duties efficiently and diligently without any blemish whatsoever.

4. The 2nd respondent, while taking charge of Chennai Circle, in February 2013, found several irregularities in the administration and in order to rectify those irregularities, initiated several stringent actions against several officials in the circle, as the head of the office. The actions initiated by the applicant would have affected the subordinate officials in the circle, which led to several anonymous/forged complaints being sent to the higher authorities complaining against her. In order to verify the veracity of such complaints, she initiated action to verify the signatures found in the so called complaints by forensic experts. Many of the authors of the complaints were found to be fictitious and those complaints were

obviously the handy-work of some subordinate officials who were averse to the office discipline enforced in the interest of overall administration of the circle.

5. In the above circumstances, several letters were written by the second respondent herein, to the petitioners herein, regarding the conduct of certain officials and she requested the authorities concerned to conduct a detailed enquiry into the wrong doings of the officials concerned. In the meanwhile, she got several documents verified by an accredited lab in support of her complaint. Some of the disgruntled employees who were at the receiving end of the applicant's action had given some baseless complaints against her, through fictitious persons. In pursuance of the so called complaints, she was directed by the 3rd petitioner herein, to appear for an enquiry on 14.10.2014 vide communication dated 04.08.2014, which communication was sent on the applicant on 13.10.2014 only. The applicant complied with the direction and appeared for the inquiry. She also requested for furnishing of any questionnaire or document to enable her to give a detailed reply in support of her stand. Thereafter, no progress has been made nor any questionnaire has been furnished to the applicant, till date.

6. While matter stood thus, vide office order dated 20.10.2014, the 2nd petitioner, namely the Additional Director General (Admin), Archaeological Survey of India, Janpath, New Delhi - 110 011, communicated the transfer of the applicant from Chennai Circle to Temple Survey Project (South), Chennai. Although, the applicant has been accommodated in Chennai itself, the motive of transfer appears to be extraneous and not for advancing the cause of administration. In her place, Mr.K.Lourdusamy, the third respondent herein working in the Temple Survey Project was posted under the same transfer order dated 20.10.2014. The applicant has further stated that, no reasons had been set forth as to why the applicant was shifted suddenly and what was the urgent requirement for exchange of officials as between the applicant and the third respondent herein. The applicant further stated that she had been removed from Chennai Circle for the reason that she steadfastly pursued against some officials for certain irregularities in the administration and her continued presence in the Circle will prejudice the position of the erring officials on the basis of her findings and examination of the documents. Her removal during the course of enquiry will only pave way for likely tampering of records in order to neutralize the efforts initiated by the applicant in the interest of the administration.

7. The applicant further submitted that there was no urgent requirement of exchanging of officials within Chennai itself, in fact, the previous incumbent was allowed to stay for more than

7-1/2 years and whereas she was sought to be disturbed within 18 months of her posting. According to her, the normal tenure in any particular posting is for three years as per the transfer guidelines. Therefore, she contended that the present transfer was for extraneous reasons and cannot stand the test of judicial scrutiny. She further submitted that the transfer order dated 20.10.2014, was put on the website and in order to safeguard her right, she went on leave from 23.10.2014 onwards.

8. Aggrieved by the said transfer/posting order made in Office Order No.240/2014-ADM.I, dated 20.10.2014, the second respondent herein/applicant, filed O.A.No.1561 of 2014, before the Central Administrative Tribunal, Chennai challenging the same.

9. Petitioners herein/respondents in the original application, filed a reply affidavit stating that the second respondent herein has joined in her new place of posting on 31.10.2014 and as such the Original Application has become infructuous.

10. The Central Administrative Tribunal, Chennai after hearing the arguments of both sides in support of their contention, vide its order dated 17.12.2014, disposed of the said original application directing the petitioners herein / respondents in the original application to consider the second respondent/applicant representation dated 21.10.2014 for retaining her in the Chennai Circle Office within a period of four weeks. Paragraph No.6 of the said order is reproduced hereunder:

"6. Upon careful consideration of the rival contentions and perusal of the material on record it could be seen that the applicant has been transferred from the Chennai Circle Office of ASI, Chennai, back to Temple Survey Project in Chennai itself just as she had completed one year and eight months, whereas the transfer guidelines stipulate normal tenure of 3 years in an office. The circumstances under which the transfer order has been issued also raises questions as elaborated by the learned counsel for the applicant and these questions have not been answered in the reply statement filed by the respondents. The applicant has apparently been transferred in the midst of an inquiry process on the alleged complaints against her and also in the midst of her reports to the authorities highlighting the irregularities of her subordinate officials in the Chennai

Circle office. This has upset the applicant a having been led down by the administration even though it would appear that the applicant has otherwise been having a good track record of service. No doubt the administration has the right to transfer officials in the interest of ensuring smooth administration. The Hon'ble Supreme Court has also laid down the principle that ordinarily the Tribunals or Courts should not interfere in the orders of transfer except for the specified reasons enunciated in those judgments. Having regard to these guidelines, it is not appropriate for this Tribunal to interfere with the impugned transfer order which also has been complied with by the applicant by joining in the new place of posting which is also in Chennai. However, under the facts and circumstances discussed above, it is felt that in the interest of justice, it would be appropriate to direct the respondents to consider her representation dated 21.10.2014 for retaining her in the Chennai Circle Office in order to vindicate her stand in the enquiry process and to pass a reasoned and speaking order on the representation within a period of four weeks from the date of receipt of a copy of this order. OA is disposed of with the above direction. No order as to costs."

11. Thereafter, in compliance to the said direction issued by the Central Administrative Tribunal, the Director General, Archaeological Survey of India considered the representation dated 21.10.2014, of the second respondent herein and decided not to accede to the request made by the second respondent herein and communicated the same to the second respondent herein. The order dated 21.01.2015, passed by the Director General, Archaeological Survey of India, is extracted hereunder:

"Whereas, the DG, ASI has carefully considered the representation of Dr.G.Maheshwari dated 21.10.2014 enclosed with the above said OA filed by her and has made the following observations:-

a) that no officer has vested right to hold any particular post or position which is decided keeping in view the larger interest of the organization consistent with the need for ensuring smooth and harmonious functioning of the office;

b) that the posting/continuation of the tenure of an officer on a post vested with the authority of head of the office is decided keeping in view the suitability of the officer to hold the responsibilities of the particular post;

c) that there is no fixed minimum tenure on a post and an officer is liable to be transferred to anywhere in India if necessitated by any administrative requirement of the organization;

d) that Dr.G.Maheshwari had not raised the issue of minimum tenure when earlier she was shifted from the post of SA, O/o TSP, Chennai, where she was posted from 31.10.2012 to 20.02.2013, to the Circle office, Chennai;

e) that the decision to post her back to the O/o TSP, ASI, Chennai was taken by the Competent Authority in the best interest of the organization;

f) that due to above said transfer, no undue hardship has been caused to Dr.Maheshwari as there has been no dislocation, both the offices being in the same premises;

g) that the presumption made by Dr.Maheshwari that she has been transferred because she sought action against some of her staff involved in irregularities is baseless and unfounded, such statements from an officer of the SA level is unwarranted;

h) that the Directorate has received few complaints against Dr.Maheshwari. Similarly, she has also forwarded complaints of irregularities against some of her staff seeking action against them. As no proceedings can be initiated against any one without establishing prima-facie guilt, all such complaints, against her as well as those made by her, have been entrusted to enquiry officers for a preliminary report;

i) that when such an enquiry has been instituted, for the sake of smooth conduct of

the enquiry, it is only just and fair that Dr.Maheshwari be transferred from the office of SA, ASI Chennai Circle which is only an administrative action adopted in such cases;

j) that during the said preliminary enquiry Dr.Maheshwari shall have sufficient opportunity to place on record the evidences in her support against complaints received against her and also in respect of those enquiries instituted at her behest against officers and staff of Chennai Circle;

And therefore, having regards to all the facts and circumstances of the case, the Director General, ASI has decided not to accede to the request made by Dr.G.Maheswari, SA for a reconsideration of her transfer issued vide ASI order dated 20.10.2014."

12. Aggrieved over the said order dated 21.01.2015, passed by the Director General, Archaeological Survey of India and the order of transfer passed by the second petitioner herein, dated 20.10.2014, the second respondent herein filed Original Application No.202 of 2015 before the Central Administrative Tribunal, Chennai. The said application was contested by the petitioners herein by filing a reply statement.

13. The Central Administrative Tribunal, Chennai after hearing the arguments of both sides in support of their contentions, vide order dated 19.06.2015, set aside the transfer order dated 20.10.2014 in so far as the second respondent herein / applicant in the original application, is concerned and allowed the said original application. Paragraph Nos.13 and 14 of the order of the Tribunal, which is relevant, are extracted hereunder:

"13. From the proposition of law as settled by the Hon'ble Supreme Court, normally the Tribunal would not interfere with the order of transfer which is an incidence of service unless it is shown to be clearly unjustified, arbitrary or vitiated by mala fide or infraction or any professed norms or principles governing the transfer. Therefore, the Hon'ble Supreme Court consistently held that if an order is passed in infraction of any professed norms or principles governing the transfer, which alone could be scrutinized judicially, the Tribunal or Court may interfere with such

orders and such interference may be made only when a judicially manageable and permissible ground is made out. The above principle squarely applies to the facts of the case on hand.

14. We find substance in the contention of the applicant that in order to give quietus to the allegations of the applicant against some of the erring subordinates in the Chennai Circle Office, she has been transferred to Temple Survey Project during the course of inquiry and without giving proper opportunity to her. Hence, the transfer which is in the nature of punitive is liable to be interfered with and we do so accordingly. In the result, the impugned order dated 20.10.2014 in so far as the applicant is concerned is quashed and set aside. The OA is allowed accordingly. In the circumstances, there shall be no order as to costs."

14. Aggrieved by the impugned order dated 19.06.2015, passed by the Central Administrative Tribunal, Chennai in granting the relief as sought for by the second respondent herein / applicant in the original application, petitioners have filed the instant writ petition on the following grounds:

i) The Tribunal failed to appreciate and consider that the second respondent cannot claim any vested right to remain in a particular post of her choice as the transfer is an incident of service;

ii) The Tribunal also failed to appreciate and consider that the law on the point is well settled that transfer and posting orders are not to be lightly interfered with unless the same is visited by mala fides and/or actuated by malice or is made in violation of express norms or rules applicable thereto.

iii) The order of the Tribunal is contrary to the principles enunciated by the authorities and rulings on the point relating to interference in the transfer/posting orders on the ground of mala fide or malice as reported in 1979 (3) SCC 165, 1988 (3) SLR 336, 2001 (2) SCC 330 and AIR 1959 SC 395.

iv) The Tribunal also erred in taking cognizance of the presumptive facts as pleaded by the 2nd respondent in the Original Application, without seeking details or particulars of such facts which were baldly pleaded by the 2nd respondent that she was in all probability being transferred because she had sought to take some disciplinary action against some of her subordinates. The Tribunal ought to have adjudicated such fact before arriving at a conclusion to quash the impugned transfer order primarily on such ground taking the statement of the 2nd respondent as verified truth and a proven fact, when in reality the application did not even disclose particulars or the necessary facts for proper adjudication on such issue.

v) The Tribunal failed to appreciate and consider that there were at least two serious enquiries pending against the 2nd respondent as referred to the petitioners by the CBI and that the 2nd respondent was holding the position of Head of Office and in custody of all official records pertaining to the subject matter of enquiry and, therefore, it is only in order to avoid any criticism of bias and to enable fair enquiry that she was transferred from one office to another without actually causing any prejudicial dislocation of her place of service, since the office she was transferred to was in the same building in Chennai.

vi) The Tribunal grossly erred in holding that the said transfer order was made on extraneous considerations even without any materials on record to support or suggest such judicial conclusion.

vii) The Tribunal failed to appreciate and consider that the judicial pronouncement in S.L.Abba's case and Rajendra Roy's case is in favour of the petitioner's case for non-interference in the transfer orders unless the facts of case reveal that the same is covered by the exceptions to the rule, which facts were absent in the instant

case.

15. Heard the learned counsel for the parties and perused the materials available on record.

16. The second respondent was posted as Superintending Archaeologist in Chennai Circle in February, 2013. While working there, she found several irregularities in the Administration and in order to rectify the same, she had initiated several stringent actions against several officials in the circle. As the stringent actions taken by the second respondent have not been liked by some of the subordinate officials, they sent several anonymous / forged complaints to the higher authorities against her. The second respondent has also written several letters to the higher authorities regarding the conduct of certain officials and requested the higher authorities to conduct an inquiry.

17. In order to substantiate her claim, she has obtained several documents verified by an accredited lab. Against the said action of the second respondent, some of the employees have given complaints and on that basis, the second respondent was directed by the fourth petitioner herein to appear for an inquiry on 14.10.2014, which she had complied with. In that enquiry, second respondent has requested for furnishing of any questionnaire or document to enable her to give a detailed reply in support of her stand. However, without giving her any opportunity, transfer order dated 20.12.2014, came to be passed.

18. Learned Counsel appearing for the petitioners submitted that transfer is an incidence of service and on the facts and circumstances of the case, Archaeological Survey of India, as an employer, has every right to transfer an employee and therefore, interference ought not to have been made, unless and until, the order of transfer is actuated by mala fides or on the grounds of incompetence or contrary to the rules. He further submitted that the Directorate has received few complaints against the second respondent and similarly, she has also forwarded complaints of irregularities against some of her staff seeking action against them. As no proceedings can be initiated against any one without establishing prima-facie guilt, all such complaints, against her as well as those made by her, have been entrusted to the enquiry officers for a preliminary report and therefore, the order of transfer is necessitated. In support of his contentions, he relied on a decision of this Court in Registrar General, Madras High Court of Judicature of Madras v. R.Perachi reported in 2011 (12) SCC 137.

19. To sustain the order of the Tribunal, Mr.Syed Mustafa, learned counsel appearing for the 2<sup>nd</sup> respondent submitted that the order of transfer is nothing but victimization of the 2<sup>nd</sup>

respondent as she had initiated several stringent actions against several officials for irregularities in Chennai Circle, as stated supra. He further submitted that the order of transfer is punitive. In support of his contentions, he relied on a decision of this Court in W.P.No.1282 of 2013, dated 04.10.2013 [P.Karunakaran v. Union of India].

20. In W.P.No.1282 of 2013, dated 04.10.2013 [P.Karunakaran v. Union of India], transfer of the petitioner therein, viz., Deputy Chief Ticket Inspector, was challenged, on the grounds inter alia that the order of transfer was punitive in nature and therefore, without giving an opportunity of hearing, transfer should not have been made. Reliance has been made to the decisions in C.Ramathan Vs. Acting Zonal Manager, Food Corporation of India (1980 I LLJ 1), S.Sevugan Vs. The Chief Educational Officer, Virudhunagar District (2006 (2) CTC 468), Somesh Tiward Vs. Union of India and others ( 2009 (2) SCC 592), Registrar General, High Court of Judicature of Madras Vs. R. Perachi and Others (2012 (1) MLJ 289 (SC) = 2011 (12) SCC 137 and an unreported decision made in W.P.Nos.11352 and 17393 of 2009 (K.M.Elumalai Vs. The Superintendent of Prisons, Central Prison II, Puzhal). Per contra, the order of transfer was sought to be sustained, on the grounds that the conduct of the petitioner therein was adverse to the interest of the department. The following decisions have been cited, viz., Union of India and Others Vs. Janardhan Debanath and Another ( 2004 (4) SCC 245), Registrar General, High Court of Judicature of Madras Vs. R. Perachi and Others (2011 (12) SCC 137), National Hydroelectric Power Corporation Ltd., Vs. Shri Bhagwan ( 2001 (8) SCC 574), State of U.P. and another Vs.Siya Ram and Another (2004 (7) SCC 405, State of M.P. and another Vs. S.S.Kourav and Others (1995 (3) SCC 270), Shilpi Bose (Mrs) and Others Vs. State of Bihar and Others (1991 Supp (2) SCC 659). After referring to the various decisions, at Paragraph No.14, the Court in P.Karunakaran's case (cited supra), held as follows:

"14. Thus, it is crystal clear that on the date when the transfer order was issued, the suspension order was in force and therefore, there cannot be any doubt to hold that the transfer order, even though styled as an administrative measure, in fact came to be passed only on collateral purpose as a punitive measure. If the affected person challenges the transfer order by contending that it was made as a punitive measure by raising various grounds, the Court can lift the veil to find out as to whether it was made on administrative grounds as stated in the transfer order or as a punitive measure as contended by the affected party."

It is also worthwhile to consider the decisions referred to in P.Karunakaran's case (cited supra),

"17. In C.Ramathan Vs. Acting Zonal Manager, Food Corporation of India ( 1980 I LLJ 1) , the Hon'ble Division Bench of this Court held at paragraph 7 as follows:-

"7. Courts are chary to interfere with an order of transfer made for administrative reasons. An innocuous order of transfer, which not only on the face of it appears to be one made in order to further the administrative interests of an organisation, but which even on a deeper scrutiny does not pose any irregular or mala fide exercise of power by the concerned authority, is generally upheld by civil courts, as courts cannot substitute their own opinion and interfere with ordinary orders of transfer of employees of established organisations. But if in a given case, an order of transfer appears to be deliberate attempt to by pass all disciplinary machinery and offend the well known principle of audi alteram partem if ex facie it is clear that the order of transfer was not made for administrative reasons but was made to achieve collateral purpose, then it is open to the Court to crack the shell of innocuousness which wraps the order of transfer and by piercing such a veil, find out the rival purpose behind the order of transfer. No doubt, a normal order of transfer can be misunderstood as a punitive measure. But, if the circumstances surrounding such an order leads to a reasonable inference by a well-instructed mind, that such an order was made in the colourable exercise of power and intended to achieve a sinister purpose and based on irrelevant considerations, then the arm of the Court can be extended so as to decipher the intendment of the order and set it aside on the ground that it is one made with a design and motive or circumventing disciplinary action and particularly when civil

servant is involved, to avoid the stringent but mandatory procedure prescribed in Article 311 (2) of the Constitution of India."

18. In S.Sevugan Vs. The Chief Educational Officer, Virudhunagar District (2006 (2) CTC 468) , a learned single Judge of this Court held at paragraphs 7 and 8 as follows:-

"7. It is seen from the impugned order of transfer that it is passed on administrative ground, but it appears that the order was passed by way of punishment and based on the complaint against the conduct of the petitioner. If that be so, the petitioner is certainly entitled for proper opportunity to defend himself as to whether the complaints against him by the Public or by the Headmaster is proper or not by way of an enquiry.

8. In these, circumstances, this Court is of the view that the transfer order passed by way of punishment is without any opportunity to the petitioner and on the face of it, the order of transfer is illegal and the same is liable to be set aside. Accordingly, the impugned order is set aside."

19. In Somesh Tiward Vs. Union of India and others ( 2009 (2) SCC 592), the Apex Court has held at paragraph 16 as follows:-

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on

the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

20. In W.A.No.1138 of 2008 dated 24.4.2009, the Division Bench considered a similar issue and the relevant paragraphs 8 to 13 are extracted hereunder:-

"8. Learned counsel for the appellant submitted that though the order of transfer is stated to be passed on administrative grounds in the counter affidavit filed by the respondents in the writ petition it has been specifically stated that the transfer was effected since the appellant came to adverse notice. He further submitted that before the learned Single Judge some confidential files were shown and based on the averments in the counter affidavit as well as in the confidential files, the learned Judge has declined to interfere with the order of transfer. He further submitted that the respondents cannot resort to an order of transfer if there are complaints against the petitioner but it is open to the Department to proceed against the appellant under the relevant Rules if there is any evidence to prove his alleged misconduct. He in support of his aforesaid contentions based reliance on a decision of Mr.Justice P.Jyothimani reported in 2006(2) CTC 468 (S.Sevugan v. The Chief Educational Officer, Virudhunagar District) wherein in paragraph 8 it is held as under:-

"8. In these, circumstances, this Court is of the view that the transfer order passed by way of punishment is without any opportunity to the petitioner and on the face of it, the order of transfer is illegal and the same is liable to be set aside. Accordingly, the impugned order is set

aside.

9. Learned counsel for the appellant submitted that the said decision has been followed by Mr. Justice N. Paul Vasanthakumar in the order dated 29.11.2006 passed in W.P. (M.D) No.9401 of 2006. He further submitted that the said order passed in W.P.(M.D.) No.9401 of 2006 has been confirmed by an order dated 09.01.2007 passed by a Division Bench of this Court in W.A.(M.D.) Nos.5 and 7 of 2007. Learned counsel has produced the copies of those judgments also.

10. Countering the said submissions the learned Special Government Pleader submitted that the order of transfer as pointed out by the learned Single Judge can be challenged only when such order of transfer is actuated by mala fied or that it is made against any statutory provision of Service Rules. He further submitted that the learned Single Judge has taken note off of the report of the Director General of Police addressed to the Inspector General of Police, West Zone, Coimbatore and has come to the conclusion that there are materials in the hands of the Police to transfer the petitioner to some other range to save the image of the police.

11. We have carefully considered the said submissions made by the learned counsel on either side.

12. Though in the impugned order of transfer it is stated as if the transfer has been effected on administrative grounds, the same has been given a go-by in the counter affidavit filed by the respondents as stated above. As per the averments contained in the counter affidavit the transfer was passed on some adverse remarks/complaints received against the appellant and also on the basis of the report sent by the Director General of Police to the Inspector General of Police, West Zone, and in such circumstances we are of the considered view that the order of transfer passed against the appellant is by way of punishment and that too without giving any opportunity of hearing to the petitioner.

13. To the facts of this case, the aforesaid three decisions squarely apply. But this aspect has not been considered by the learned Single Judge. May be that these points were not argued before the learned Single Judge. But being a question of law the same can be argued before the Division Bench. We are in full agreement with the decisions referred to above. Hence applying the principles laid down therein, we are constrained to interfere with the order passed by the learned Single Judge. Hence the order dated 10.09.2008 passed in W.P.No.4564 of 2008 is hereby set aside and the writ appeal is allowed. However there will be no order as to costs. Consequently the connected MP is closed."

21. Reverting to the case on hand, though it is stated that the order of transfer dated 20.10.2014, transferring the second respondent from Chennai Circle to Temple Survey Project (South) was passed on administrative ground, a perusal of the records would show that the order was passed by way of punishment, based on complaints against the conduct of the second respondent. It can be seen in the averments made by the petitioners that the transfer was passed on some adverse remarks/complaints received against the second respondent and also on the basis of the enquiry conducted by the Regional Director (South), Archaeological Survey of India, Bangalore and in such circumstances, we are of the considered view that the order of transfer passed against the second respondent is by way of punishment and that too without giving appropriate opportunity of hearing to the second respondent.

22. Time and again, Courts have consistently held that an order of transfer is an administrative order and there can be no doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with by the Courts, except in cases where inter alia mala fide on the part of the authority concerned is proved. In the instant case, the transfer order passed by the second petitioner dated 20.10.2014, would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer but based on an irrelevant ground i.e. on the allegations made against the second respondent in the anonymous complaints. We make it clear that though the employer is entitled to pass an order of transfer in administrative exigencies but at the same time, the order of transfer should not be passed by way of or in lieu of punishment. Therefore, we are of the view that when an order of transfer is passed in lieu of punishment, the same has to be set aside as being wholly illegal.

23. We are of the view that the transfer order dated 20.10.2014, has been rightly quashed by the Central Administrative Tribunal, Chennai vide impugned order dated 19.06.2015 and we find no illegality or irregularity in the same. Accordingly, the impugned order of the Central Administrative Tribunal, Chennai made in O.A.No.310/00202/2015, dated 19.06.2015, is sustained.

In the result, the writ petition fails and accordingly, dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

asr

- 1.The Registrar  
Central Administrative Tribunal  
Chennai
- 2.The Director General, Union of India  
Archaeological Survey of India  
Janpath, New Delhi
- 3.The Additional Director General (Admin)  
Archaeological Survey of India  
Janpath, New Delhi
- 4.The Director (Admin)  
Archaeological Survey of India  
Janpath, New Delhi
- 5.The Regional Director (South)  
Archaeological Survey of India  
KSIMC Building, Industrial Estate  
Rajaji Nagar, Bengaluru

+1cc to Mr.s.Devie , Advocate SR.No. 3522

W.P.No.28904 of 2015

and

M.P. Nos.2 and 3 of 2015

A.SK(07/02/2019)