

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13807 OF 2025

Mr. Ganesan Mani .. Petitioner

Versus

The Union of India & Ors. .. Respondents

**WITH
WRIT PETITION NO. 13808 OF 2025**

Mr. Sudhakar Jaysing Vaydande .. Petitioner

Versus

The Union of India & Ors. .. Respondents

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Mr. R. L. Kulkarni a/w Mr. A. R. Kulkarni a/w Mr. A. P. Mandlik,
Advocates for the petitioner in both the WPs.

Mr. Neel G. Helekar, Advocate for Respondents in both WPs.

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**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

DATE : 11th NOVEMBER 2025.

P.C. :

Aggrieved by the common order dated 12th September 2025 in Original Application Nos.6 of 2025 and 57 of 2025 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai (in short, Tribunal), these writ petitions have been filed by Mr. Ganesan Mani (in Writ Petition No.13807 of 2025) and Mr. Sudhakar Jaysing Vaydande (in Writ Petition No.13808 of 2025).

2. The petitioner-Ganesan Mani joined the establishment of Directorate of Construction Services and Estate Management as security guard on 16th November 2017 and petitioner-Sudhakar Jaysing Vaydande joined the Shri Project, BARC as security guard on 14th January 1991. They are aggrieved by their mid-term transfer vide Office Order dated 26th December 2024 which according to them was issued without following the Office Memorandum dated 21st March 2024. The stand of the respondents before the Tribunal was that clause 5.7 of the transfer policy does not speak about minimum period of service and transfer order can be passed in the administrative exigencies and functional requirements.

3. The Tribunal referred to the decisions of this Court in Writ Petition No. 2706 of 2019 titled "*Shri Dattatray Krishnaji Pawar v. Union of India & Ors.*" and Writ Petition No.8898 of 2010 titled "*Shri Rajendra Shankar Kalal v. The State of Maharashtra & Ors.*" and earlier decisions of the Tribunal in Original Application No.285 of 2020 titled "*Shri Sudhakar L. Auchite v. Union of India & Ors.*" and Original Application No.314 of 2023 titled "*K. V. Madhusudanrao v. Union of India & Anr.*" and held as under: -

*"22. So far as arguments relating to bias are concerned, I do not find any substance in it. In the case of **Shri Dattatray Krishnaji Pawar** (supra), concept of bias has been explained by the Bombay High Court. In para 17 and 18, Bombay High Court has held thus: -*

"17. By way of reiteration, we observe that an order of transfer would amount to a punishment if by reason thereof the officer/employee has been asked to discharge duty of a post lower than that he had been holding or if his pay has been downgraded or his promotional prospects are jeopardized or if the order is stigmatic, in the sense that he would have to carry an indelible stain for the rest of his service career without there being any finding of guilt recorded against him. None of these incidents is present in the case of the petitioner's transfer. We, therefore, cannot hold his transfer as punitive.

18. *It is also not a case where the petitioner despite not having suffered any civil consequence by reason of the order of transfer being allegedly punitive in nature, or despite the transfer order being innocuously worded but founded on reported indiscipline, we can and must, by lifting the veil, ascertain whether any mala fide motive has triggered the same and/or the petitioner has been dealt with in any manner violative of his rights in the matter of public employment. It is not in dispute that the petitioner's service was transferable. Over and above that, the petitioner being governed by FR 15, he could be transferred on account of misbehaviour, the same can be made to a post carrying less pay than the pay of the post on which the officer/employee holds a lien. The petitioner not having been transferred to hold a post carrying lesser pay, we see no reason to hold that in the given facts the petitioner suffered the order of transfer as and by way of punishment."*
23. *From the above pronouncement of the Bombay High Court, it is clear that a transfer would be called punitive only if the employee is transferred to a post drawing lesser pay or he has been asked to discharge duty of a post lower than that he had been holding, his pay has been downgraded or his promotional prospects are jeopardized or if the order is stigmatic. None of these factors exist in the case of both the applicants. It is not their case that they have been asked to perform the duties of a lower post, they have been transferred to a post drawing lesser pay, or the order is stigmatic. The applicant has alleged that he was forced to give statement and he has preferred representation against adverse remarks. And that has triggered his transfer. I do not find any substance in this contention. It is true that the applicant has complained in writing against this incident of alleged misbehaviour. I do not find any substance in this contention. When he has made allegations against the security guard, he should have made them as parties. In these circumstances, the transfer order cannot be called by way of punishment or punitive or it is out of bias.*
24. *Respondents' contention is that the applicants have been transferred out of public interest. The respondents have set out in their reply that various newly recruited civilians have been posted at various stations and to impart training to them, the respondents have posted the applicants at these places. When they have set out the public interest, it cannot be interfered with, in power of judicial review. Applicants have also not disputed this fact. If the transfer is in public interest, Tribunal cannot interfere in it in judicial review.*
25. *The applicant in OA No.57/2025 contends that he is suffering from CAG ailment. He has annexed the certificate which indicates that he has undergone angiography. It is not such an ailment which cannot be treated at a place like Mysore. This certificate shows that he was*

admitted on 10th October, 2024 and discharged on 11th October 2024. This certificate also does not show that he is not advised to travel. Another reason assigned by him is that his daughter's marriage is yet to be performed and, therefore, he has to be in Mumbai. This cannot be an exceptional reason for which his transfer can be stalled.

26. The applicant has also placed reliance on the case of **Susmriti Das And Ors. vs Basumati Corpn. Ltd.** decided on 06th January, 1993, (1994) ILLN 485. The Hon'ble Calcutta High Court has held thus:

“.....we cannot persuade ourselves to agree with the submission of the respondent that only steps have been taken to open new department at Silguri, even though the management remains the same and it is same establishment that covers both the units, one at Calcutta and other at Silguri. The Ld. Trial Judge has observed in his interpretation of the definition of the department that it is so comprehensive as to include both the Calcutta as well as Siliguri units to be a part and parcel of the one and the same comprehensive whole. The opening of the unit at Silguri does not mean the opening of the new department at Silguri but also opening of another separate establishment at Silguri and that being so, Para 7 of the Standing Order does not permit the nature of the transfer impugned. It cannot be held in such circumstances that the service condition are quite sufficient for the management to pass the impugned order of transfer asking the writ petitioner to join at Silguri. We, therefore, set aside the order of the Ld. Trial Judge impugned, quash the order of transfer under challenge and direct the respondent authorities to proceed in accordance with law. In this case the Writ Petitioner who was journalist was transferred from Calcutta to Silguri Unit and the defense of the respondent was that, both are belonging to same department. The dictionary definition of unit is “a single thing which is complete in itself, although it can be part of something larger”.

27. This judgment of Calcutta High Court has no application to the facts of the case at hand. In the case at hand, a common seniority list is maintained for Mysore, Vizag and Mumbai. In the case of **Susmriti Das And Ors.** (supra), a new unit was to be opened and that was held to be another separate establishment. In the case at hand, this is not the fact situation. As indicated earlier, the seniority list of all the three places is a common seniority list and, therefore, this authority cannot be of any help to the applicants.

28. In the case of **Sameer Dnyandev Wankhede** (supra), it has been held that if transfer is ordered in deviation of policy, weighty reasons are required to be recorded for such deviation. In the case at hand, the respondents have assigned the reasons. Therefore, this case has no application to the case at hand. As indicated earlier, clause 5.2 of the

*revised policy, permits the Cadre Controlling Authority to effect mid-term transfer. In the case of **Dipika Kantilal Shukla** (supra), it is held that an employer has the right to transfer its employees in the interest of the administration and in public interest, since transfer is an incidence of service. However, when the employer itself has framed certain guidelines for certain categories of employees, with a clear intention, then the action of the concerned authorities should have a reasonable nexus with the objectives sought to be achieved. It is expected that the respondents will act within the guidelines framed by them, otherwise, it will remain nothing more than an empty formality on paper. This authority also does not apply for the reason that the respondents have assigned reasons for the transfer of the applicants.*

*29. In the case of **Somesh Tiwari** (supra), it is held that transfer order can be interfered with, if the same is passed mala fide or because or because of malice in law. In the case at hand, the applicants could not make out any case about malice in fact or malice in law.*

30. In these circumstances, narrated above, I do not find that the transfer is mala fide or is in violation of transfer policy. Hence, both the applications stand dismissed with no order as to costs.

31. Pending Mas, if any, stand closed.”

4. Clause 5.7 of the Office Memorandum dated 21st March 2024 reads as under: -

“5.7 All Group B (non-gazetted) and Group C posts are unit based and may not be transferred from one unit to another since each unit is maintaining separate seniority lists. However, officers shall have a tenure of 5 years in a particular section in the concerned unit and they should be transferred to some other section in the same unit by the concerned unit.”

5. The learned counsel for the petitioners states that clause 5.7 of the Office Memorandum dated 21st March 2024 provided protection to Group “B” and Group “C” employees who should not be transferred from one unit to another unit. The applicant-Ganesan Mani was transferred to Vizag and the applicant-Sudhakar Jaysing Vaydande was transferred to Mysore. The Tribunal observed that these applicants did not provide any information as regards the number of units and the number of sections under each units especially at

Mumbai under the Department of Atomic Energy. The Tribunal also noticed that the respondents have taken a stand that Mysore and Vizag are not different units and, in fact, are sections in the same unit at Mumbai. Before the Tribunal, seniority list of security guards working in BARC (Trombay), GSO (Tarapur), RMP (Mysore) and BARCF (Vizag) was produced. The Tribunal further held that the information obtained by the applicants through Right to Information Act is entirely for a different purpose, that is, for designating the APIOs and CPIOs.

6. This is too well settled that transfer is an incident of service and no government employee can claim a vested right in a post or insist that he must be posted at a particular place. This is also beyond any realm of doubt that the transfer policy, if any, is not statutory in nature and is merely guidelines. Besides that, the findings of the Tribunal that the petitioners belong to same unit is not disputed. The security guards were required to tender joining at the transferred place by virtue of the transfer order dated 26th December 2024 but have remained absent from duty and as stated by the learned counsel for the respondents a disciplinary proceeding has been initiated against them. Notwithstanding that, we grant one week's time to the petitioners to tender their joining at the transferred place and with this liberty Writ Petition Nos. 13807 of 2025 and 13808 of 2025 are dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]