

**(1998) 03 DEL CK 0099**

**In the Delhi High Court**

**Case No :** C.W. No. 2945 of 1997 and C.M. No. 8939 of 1997

Lt. Col. B.K. Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 20-03-1998

**Acts Referred:**

Army Act, 1950 — Section 26, 27, 33

**Citation :** (1998) 73 DLT 181

**Hon'ble Judges :** K. Ramamoorthy, J

**Bench :** Single Bench

**Advocate :** A.K. Bakshi and R.D. Itorora, for the Appellant; Sarabjit Sharma and Karamjit Singh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K. Ramamoorthy, J.—The petitioner has filed this writ petition challenging the action of the respondents in not permitting him to proceed on voluntary retirement from Army service towards the end of 1998 or early 1999 and the action of the respondents in shifting him from Delhi to outside. The petitioner wants to be in Delhi till he is permitted voluntary retirement from service. The main grounds on which the petitioner seeks relief are that he comes under low medical category, that he was already superseded because of his being a low medical category, that he had already worked in Wireless Experimental Centre from November, 1989 to March, 1992 and he is entitled to continue in Delhi in Wireless Experimental Centre which, according to him, is the Headquarters of the entire department.

2. The Petitioner has filed Annexure P-1 which is the proceedings of the Medical Board. In this the percentage of disability is shown as composite 40%. His condition is to be reviewed on 24.7.1996. The Medical Board has expressed the view that he is primary hypertension patient, fit for military duties in plains, including foot hills up to 2500 ft. Specialist facilities available in station or within 15 kms.

3. Learned Counsel for the petitioner brought to my notice the affidavit filed by him on 3.12.1997 about his medical conditions. The affidavit reads as under :

I, Lt. Col. B.K. Sharma, son of Shri C.D. Sharma, aged about 49 years, resident of 25, Cassels Road, Delhi Cantt. do hereby solemnly affirm and declare as under:

That I am the petitioner in the above mentioned Civil Writ Petition No. 2945 of 1997 and I am fully conversant with the facts of the case, and I am competent to swear this affidavit.

That I had filed a Letters Patent Appeal No. 284/97 which was heard on 28.11.1997 and 2.12.1997. During the course of which I filed an affidavit on 29.11.1997 regarding my latest Medical condition wherein I brought out the following facts:

My blood pressure on 1.11.1997 was 200/130 m.m.Hg. I was admitted in Military Hospital, Delhi Cantt. on the same day.

I remained in Hospital for 19 days from 1.11.1997 to 19.11.1997 and I was subjected to various medical routine/special tests.

On 19.1.1997 at the time of my discharge from Hospital I was advised to follow the treatment as under :

-- Amlodipin 5 mg OD -- Atenolol 50 mg OD -- Dispririt 1\2 OD

A copy of my affidavit dated 29.11.97, filed in L.P.A. 284/97 is annexed at Annexure P-XXVII.

A copy of my discharge slip dated 19.11.1997 from Military Hospital, Delhi Cantt. is annexed at Annexure P-XXVIII.

On 2.12.1997 during the course of proceedings in L.P.A. 284/97 copy of extracts from American Medical General "the Washington Manual" 28th Edition, showing the classification of Hypertension, ranging from normal to very severe, was placed before the Hon"ble Court. A copy of the said extracts from the said Medical General is annexed at Annexure P-XXIX. As per the said medical classification, I am presently suffering from "Severe" to "Very Severe" Hypertension based on my blood pressure reading of 200/130 mm Hg on 1.11.97 and 164/110 mm Hg on 29.11.1997.

That on expiry of my half pay/furlough leave I joined duty at Alwar and presently I am on 12 days casual leave from 2.12.1997 to 13.12.1997. While at Alwar I learnt that the medical facilities which are available at Delhi Military Hospital are not available at Alwar Military Hospital.

4. The learned Counsel referred to page 194 about the opinion expressed in the Washington Manual if the blood pressure is between the range beyond 200 the condition of the patient would be very severe. The petitioner was in hospital from 1.11.1997 to 19.11.1997 as could be seen from the discharge book at page 199. The learned Counsel for the petitioner relied upon the decision of the Supreme

Court reported in *State of Punjab and others Vs. Mohinder Singh Chawala, etc.*, wherein the Supreme Court had expressed the view that the citizen have right to health and have got right to life under Article 21 of the Constitution and to safeguard these rights the citizens can approach the Courts of Law. Learned Counsel referred to Rule 15-A of the Army Rules which provides an officer who is found by a Medical Board to be permanently unfit for any form of military service may be released from the service in accordance with the procedure laid down in this rule. The petitioner, according to the learned Counsel, is anxious that the petitioner should not be dealt with under Rule 15-A. The Rule 15-A reads as under :

(1) An officer who is found by a Medical Board to be permanently unfit for any form of military service may be released from the service in accordance with the procedure laid down in this, rule.

(2) The President of the Medical Board shall, immediately after the Medical Board has come to the conclusion that the officer is permanently unfit for any form of military service, issue, a notice specifying the nature of the disease or disability he is suffering from and the finding of the Medical Board and also intimating him that in view of the finding he may be released from the service, every such notice shall also specify that the officer may, within fifteen days of the date of receipt of the notice, prefer a petition against the finding of the Medical Board to the Chief of the Army Staff through the President of the Medical Board :

Provided that where in the opinion of the Medical Board the officer is suffering from a mental disease and it is either unsafe to communicate the nature of the disease or disability to the officer or the officer is unfit to look after his interests, the nature of the disease or disability shall be communicated to the officer's next-of-kin who shall have the like right to petition. . . .

(3) if no petition is preferred within the time specified in Sub-rule (2), the officer may be released from the service by an order to that effect by the Chief of the Army Staff or Adjutant General.

(4) if a petition is preferred within the time specified in Sub-rule (2), it shall be forwarded to the Central Government together With the records thereof and the recommendation of the Chief of the Army Staff. The Central Government may, after considering the petition and the recommendation of the Chief of the Army Staff or Adjutant General, pass such order as it deems fit.

5. On 3.8.1997 the petitioner submitted an application for voluntary retirement. The Commanding Officer had given the following recommendations on 5.8.1997:

Recommendations of the initiating, Officer, Col. Mr. M.P. Singh C/O 12 FD Sub GP, C/O 56 APO Along with Comments as per para 16 of policy letter.

(1) The officer is low medical category (permanent). He has been finally superseded for further promotion. As per the policy in vogue, officer may be allowed to proceed on voluntary retirement with effect from 31st Dec., 98.

(2) Since the officer desires to settle down in Delhi, he may be allowed to draw his pension at Delhi.

(3) The officer may be granted preparatory period as applicable to the officers who proceed on superannuation, thereby enabling him to plan his post retirement settlement.

(4) It is recommended that the officer's plea to retire in Dec., 98 be accepted since it would permit him to carry out his Medical Board on 23 May, 98 as also release Medical Board well in time, as per instructions on the subject.

(5) Officer is likely to get possession of DDA flat in mid 1998. Time period sought by officer for making the flat habitable after possession is reasonable and justified.

(6) The officer's plea for time required for post retirement settlement planning is valid since the officer has not done any resettlement course.

6. The learned Counsel submitted that on 19.10.1994 a representation was made and that was rejected on 25.11.1954. The learned Counsel referred to Rule 56 of the Army Rules, 1954. The learned Counsel referred to order passed by this Court on 30.8.1997 wherein time was granted to the respondents to file reply. There was a Letters Patent Appeal,

7. Learned Counsel referred to the judgment of the Supreme Court reported i National Insurance Co. Ltd., New Delhi Vs. Jugal Kishore and Others, to show that the respondents are bound to produce all the records available in their custody to enable this Court to come to a conclusion on facts.

8. On 25.3.1994, there was movement order which reads as under :

#### Movement Order

(1) IC-33493 M Maj. B.K. Sharma (CDA(O)A/CNo.XIII/121/144518M) of this unit will proceed on permanent posting to 93 GL Sec. Type "C" C/ o 56 APO, leaving this unit on 19 July, 94 (AN).

The offr. will :

(a) be SORS/SOS w.e.f. 20 July, 94 (FN)

(b) Sign offers arr and dep book prior to his move.

(c) Collect LRC from QM before move.

(d) handover clearance cert to Adjoint before dep.

(e) be in possession of president card.

(f) observe strict mil discp enroute.

(g) proceed from Firozpur Cantt. Jn to Jammu Tawl under own arrangement and claim as applicable.

(h) claim TA/DA as admissible on arr at destination.

(3) This unit has not claimed ration money for the period of journey/ joining time. The same will be claimed by his new unit.

(4) The offr has been gtd joining time as admissible vide AO 259/73:

(5) In case of any difficulties experienced enroute the offr will report to MCO/MP if neither is available to the Stn. Master for necessary assistance by producing this move order as an auth.

(6) Certified that the move is URGENT.

Auth: Army HQ posting order No. 28283/GLO 93"C/MS IE 25 Mar 94.

Sd/- x x x x x

(Aloke Singh)

for Offg. CO

01074/01/sigs/out/p 7

Inf Div Sig Regt

C/O56 APO

18 July, 94.

9. On 30.5.1996, the petitioner was posted in Wireless Experimental Centre. He joined duty in Delhi on 17.8.1996. The learned Counsel again referred to the Medical Board proceedings on 24.7.1996 wherein the disability is mentioned as composite 40%. The learned Counsel referred to the policy framed by the respondents dated 29.5.1986. The same reads as under :

#### TENURE OF APPOINTMENTS - OFFICERS

##### POSTED IN DELHI

1. There will be a uniform tenure of 3 years for all officers posted in Delhi except officers who have been posted to Delhi on compassionate grounds or in last leg/ penultimate posting, in whose case, the tenure will be restricted to two years.

2. The following guiding principles are laid down for uniform application of laid down tenures:

(a) Under no circumstances will the tenure of an officer in Delhi be extended beyond three years without prior approval of laid down Competent Authority.

(b) No officer of the rank of Col. and below will be posted to Delhi for second tenure unless he has done a minimum of 6 years in other stations. However, officers of the Corps of Signals and Int Corps may be posted to Delhi for a second tenure provided they have served two tenures for a period not less than a total of five years outside Delhi. In the case of Int Corps Cols the ban for

reposting to Delhi has been fixed as three years, as an interim measure. However, the ban for reposting to Delhi will not be applicable to Brigs and above.

(c) A truncated tenure of less than 1 1/2 years will not debar an officer from being considered for another posting to Delhi, even before the expiry of the ban period (6 years).

3. The Competent Authority as under may grant extension of tenure up to a total period of 6 months :

(a) Majors and below MS

(b) Lt Col. and Col. COAS

4. Officers posted to Delhi towards the last leg of their service ask for extension of tenure on the grounds that they have only one to two years service left before superannuation and that it would not be in their interest as also that of the service to be moved out for a truncated last tenure before retirement. To obviate this responsibility certain aspects of the penultimate and last leg posting are being planned together sufficiently in advance of the retirement date to ensure that the officer gives a viable tenure of minimum of 2 to 3 years in each one of the last two appointments. Hence extensions of tenure in Delhi will not be granted on the above grounds. This will be applicable to all officers including SL (TOs).

5. As a rule, an officer, who is serving in Delhi and has been in the station for over a year will not be allowed to apply for long entrepreneurship language course conducted by the School of Foreign Language.

10. According to the learned Counsel the policy laid down could apply to a person seeking premature retirement. According to the learned Counsel, what is applicable to a normal case of retirement would apply to the petitioner who seeks premature retirement. The learned Counsel submitted that the penultimate and last leg posting should be planned sufficiently in advance as in the case of normal retirement cases as also in the case of the petitioner. The learned Counsel referred to Sections 26, 27 and 33 of the Army Act, 1950.

11. Section 26 provides for remedy of aggrieved persons other than officers. The provisions give right to such persons who are coming within the purview of the Section to make a complain if he felt aggrieved by any act of any superior officers.

12. Section 27 provides that if any officer who deemed himself erred by his Commanding Officer does not receive the redress to which he considers himself to be entitled, may complain to the Central Government in such manner as may from time to time be specified by the proper authority.

13. Section 33 categorically provides: "Saving of rights and privileges specified in the preceding sections of this Chapter shall be in addition to, and not in derogation of, any other rights and privileges conferred, on persons subject to

this Act or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force."

14. The learned Counsel relying upon the Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, submitted that the petitioner is entitled to consideration in the light of the library spirit of the Constitution as laid down by the Supreme Court. The petitioner referred to Ex. Major N.R. Ajwani and Others Vs. Union of India and Others, in the following terms:

Thus, fundamental rights can be restricted only to the extent provided for in the Army Act and not otherwise. What is not specifically or impliedly taken away by the Army Act in her in the Army personnel. The procedure prescribed for governing the tenure of service of an Army personnel governed by the Army Act even if it violates the fundamental rights the same cannot be challenged in view of Article 33 of the Constitution of India on the ground that it violates fundamental rights guaranteed under Part III of the Constitution of India.

15. The learned Counsel submitted that his case should be considered by the respondents in the light of para 4 of the policy. In this case, the learned Counsel referred to page 113 of the counter filed on behalf of the respondents, wherein it is stated "that it is further clarified that the provision of Army Headquarter letter 29159/MS-9B dated 29th May, 1986 are applicable to the individual postings and the application of same cannot be imported to a unit which is required to move operationally." He referred to page 112 of the counter affidavit wherein the respondents have referred to his posting in the following terms:

In reply to para No. 12 of the petition it is submitted that the petitioner's posting to 12 Filed Sub Group from 1 Wireless Equip mental Centre was done due to military exigencies. While posting the petitioner to his present unit his qualification, prior experience in similar type of unit and his operational experience were kept in mind. This posting was necessitated due to operation reasons. It is further submitted that at the time of posting the petitioner to his present unit respondent No. 4 to 6 were not even aware of the impending move of 12 Fd. Sub Group which came in February, 97 that is almost six months after the petitioner's move to present unit.

16. According to the learned Counsel that the request for transfer on the basis partly on experience and partly on medical grounds. The learned Counsel referred to the posting where he had worked in various places in which he had worked from 1987 on wards at page 5 in the following terms:

The details of posting given by the petitioner are matter of record and admitted to that extent. However, it is submitted that posting to 19 WEU was carried out on the request of the petitioner to enable him retain his family at Delhi. Similarly the petitioner was posted to I Wireless Experimental Centre on his own request from 93 Ground Experimental Centre on his own request from 93 Ground Liaison Section.

17. Learned Counsel for the petitioner submitted that the petitioner's case should have been considered in the context of Article 21 of the Constitution of India which had been amplified by the Supreme Court reported in *Surjit Singh Vs. State of Punjab and Others*, in the following terms :

It is otherwise important to bear in mind that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and invoidable. The importance and validity of the duty and right to self-preservation has a species in the right of self-defense in criminal law. Centuries ago thinkers of this great land conceived of such right and recognised it. Attention can usefully be drawn to Verses 17, 18, 20 and 22 in Chapter 16 of the Garuda Purana (A dialogue suggested between the Divine and Garuda, the bird) in the words of the Divine :

17. Vinna dehena kasyaapi canpurushartho na vidyate Tasmaaddeham dhanam rakesh punya karmaani saadhayet Without the body how can one obtain the objects of human life? Therefore protecting the body which is the wealth, one should perform the deeds of merit.

18. rakesh punya karmaani saadhayet sarvasya bhajanam Rakshane yatnamaatishthejee vanbhaadraani pashyati One should protect his body which is responsible for everything. He who protects himself by all efforts, will see many auspicious occasions in life.

20. Shari rakesh paayaah kriyhante sarvadaa budhaih Necchanti cha punastyaagamapi kushthaadiroginah. The wise always undertake the protective measures for the body. Even the persons suffering from leprosy and other diseases do not wish to get rid of the body.

22. Aatmaivayadinaatmaanamahitebhyo nivaarayet Konsyo hitakara stasmaadaatmaanam taarayishyati If one does not prevent what is unpleasant to himself, who else will do it? Therefore one should do what is good to himself.

18. Learned Counsel submitted that the petitioner is seeking premature retirement and the posting must be in Delhi as a last leg. He referred to para 8 of the judgment reported in *D.S. Nakara and Others Vs. Union of India (UOI)*, reads as under :

Primary contention is that the pensioners of the Central Government form a class for purpose of pensionary benefits and there could not be mini-classification within the class designated as pensioners. The expression "pensioner" is generally understood in centra-distinction to the one in service. Government servants in service, in other words, those who have not retired, are entitled to salary and other allowances. Those who retire and are designated as "pensioners" are entitled to receive pension under the relevant rules, Therefore, this would clearly indicate that those who render service and retire on superannuation or any other mode of retirement and are in receipt of pension are

comprehended in the expression "pensioners".

19. The learned Counsel referred to Army Rule 16-B and referred to Section 191 of the Army Act which empowers the Government to make rules. According to learned Counsel, the respondents have no power to frame regulations affecting the rights of the persons working in the Army given to them under the Act and the rules framed thereunder. The rules framed by the respondents had been approved and published and they have the force of law but the regulations framed by the respondents have no authority of law and they are not enforceable. Regulation 105 which reads as under :

EXTRACT FROM PARA 105 (a) OF defense SERVICE REGULATIONS

FOR THE ARMY

Removal, resignation and retirement,

105. Application for resignation/retirement.

(a) Application of officers of the army to resign their commission or to retire from the service will be forwarded through the prescribed channels to Army HQ. The applicant need not given a prospective date from which it is desired that the retirement/resignation should take effect as it may not administratively convenient for the Competent Authority to take a decision by a desired date. However, if an applicant desires to retire from a specified date for any valid reasons, such as commutation of pension or higher rate of pension, he may indicate a prospective date in his application and submit his application not less than 4 months before that date. In the case of retirement with requisite qualifying service for pension, the applicant will also state where he wishes to draw his pension."

(b) in forwarding an application, the of unit, when it is the result of misconduct or any thing affecting the honour of the officer or his character as a gentleman, will state all the circumstances and particulars of the case. The authority responsible for forwarding the statement to Army Headquarters will ensure that it gives a complete account of the case before forwarding it. The of unit will also state whether all regimental claims have been paid if he is aware of any outstanding claims, and if there is any objection to the resignation or retirement being sanctioned.

20. The regulation provides that application for resignation or retirement should be made not less than 4 months before the actual date of resignation or retirement. What is submitted by the learned Counsel is that the petitioner would attain the age of superannuation in the year 2000. He has asked for premature retirement before the end of 1998 or early 1999 and he would be entitled to posting as per the policy of 1986 either on the basis of penultimate or last leg posting, be in Delhi. The regulation cannot seek to take away that the rights of the persons working in the Army. The learned Counsel derived support from the judgment of this Court reported in M.R. Saini v. Union of India and Anr., 1985

Crl. L.J 1263. This Court had taken the view that the regulation is not statutory.

21. On 23.12.1996, a policy called premature retirement was formulated. Para 16 of the policy reads as under:

Applications for premature retirement/resignation will be forwarded expeditiously to Army Headquarters, MS Branch, MS (PR), or (MS X), as the case may be, in duplicate. The applicant should express willingness to retire/ resign at the earliest without reference to any date as it may not be administratively appropriate for the Competent Authority to take a decision by a desired date. However, if an applicant desires to retire/resign from a specified date for any valid reason, such as commutation of pension or higher rate of pension, he may give necessary details in this regard and indicate a prospective date in his application and submit his application approximately four months before that date. Application received without giving valid reasons, in cases where premature retirement is sought by a specific date, will be returned accordingly. Application should be submitted to Army Headquarter, MS Branch, MS(PR), in respect of officers of the rank of Col and below and to MS (X) in respect of officers of the rank of Brig and above as per the prescribed format at Appendix "A" to this letter.

This is similar to Regulation 105.

22. The learned Counsel referred to the judgment of the Supreme Court reported in AIR 1997 565 (SC) which read as under :

Regulation 25 provides for the qualifying service and is in the following terms:

25(a) The minimum period of qualifying service required for a retiring pension is 20 years (15 years in the case of a late entrant--see Regulation 15). Only completed years of qualifying service shall count.

(b) The minimum period of qualifying service for a retiring gratuity shall be 10 years".

The letter of 25.4.1981 issued by the Army Headquarters does state that pensionary benefits will be lost if an officer resigns from service, but it has not been shown to us that this letter, in any way, supersedes or purports to amend or modify the aforesaid regulations. In view of the specific right of pensionary benefits having granted by the said Regulations no effect need be given to the letter dated 25.4.1981.

23. Learned Counsel submitted that the petitioner is entitled to be posted in any Wireless Experimental Centre and he cannot be shifted to a Wireless Unit. The learned Counsel referred to para 10 in the writ petition wherein he has stated:

That thereafter on 30.5.1996, respondent No. 6, the Assistant Military Secretary (MS-IE), Army Headquarters issued orders for reversion of the petitioner from deputation duty in J&K and the petitioner was ordered for posting to Delhi with Static Unit I, Wireless Experimental Centre on Peace Establishment based on his service profile and permanent low medical category. A copy of the respondent

No. 6, Assistant Military Secretary (MS-IE), letter dated 30.5.1996 is annexed as Annexure P-111. Accordingly, the petitioner joined duty with 1 Wireless Experimental Centre at Delhi on 17.08.1996.

He referred to para 11 as under:

That in Army, the postings of officers are issued under the orders of the Military Secretary (respondent No. 4), Army Headquarters, for which various Sections of Military Secretary Branch at Army Headquarters are given the responsibility. The postings within Signals department units are ordered by respondent No. 5, Deputy Military Secretary (MS-13, Signals). However, in case a Signals Officer e.g. the petitioner, is to be posted on deputation duty to some unit outside the Signals Department then his such deputation duty posting is to be ordered by respondent No. 6, Assistant Military Secretary (MS-1E) and similarly, such officer's reversion back from deputation duty is to be ordered by respondent No. 6, Assistant Military Secretary (MS-1E). The orders for petitioner's posting on deputation duty in J & K Sector and his subsequent reversion from such deputation duty was carried out under the orders of respondent No. 6 Assistant Military Secretary (MS-IE),

24. The learned Counsel submitted that what is stated in paras 7 to 11 by the petitioner is admitted to be correct by the respondents at page 112 wherein respondents have stated "the contents of paras 7 to 11 being matter of record are admitted to that extent".

25. The learned Counsel took pains to bring home the point that the respondents 5 and 10 had deliberately brought about the situation by which the petitioner was shifted to a War Unit knowing fully well that the petitioner was not doing well and he could be posted only in a peace Unit having regard to his being in a low medical category had shifted him to War Unit deliberately with a view to causing prejudice to him. The petitioner came to know about it only in February, 1997 though when the order was passed shifting him from peace unit to War unit he obeyed the order and joined immediately. The petitioner had stated in para 13 that the Military Secretary in the Army Headquarters was well aware of the movement of the war unit and in spite of it the petitioner was shifted to a war unit. In para 13 the petitioner has stated as under :

That the petitioner respectfully submits that it would be pertinent to mention that the office of the Military Secretary at Army Headquarters was well aware of the move of the petitioner's present unit much earlier whereas this fact became known to the petitioner only sometimes in Feb., 1997. Accordingly, respondent Nos. 5 and 9 who were one and the same at that time, with the mala fide intention of creating harassment to the petitioner, changed the petitioner's initial posting with peace unit of 1 Wireless Experimental Centre to the petitioner's present unit which is field/active unit. Had the petitioner continued being with peace unit 1 Wireless Experimental Centre, to which he was initially posted and which is a static unit then the petitioner would not have had to move out from

Delhi and he would have been able to proceed on voluntary retirement from Delhi on completion of his three years peace tenure in Delhi. The petitioner was deprived of the said benefit, mala fide, by respondent Nos. 9 and 5 who were one and the same at that time. ,

In reply to para No. 12 of the petition it is submitted that the petitioner's posting to 12 Field Sub Group from 1 Wireless Equip mental Centre was done due to military exigencies. While posting the petitioner to his present unit his qualification, prior experience in similar type of unit and his operational experience were kept in mind. This posting was necessitated due to operation reasons. It is further submitted that at the time of posting the petitioner to his present unit respondent Nos. 4 to 6 were not even aware of the impending move of 12 Fd. Sub Group which came in February, 97 that is almost six months after the petitioner's move to present unit.

26. The learned Counsel submitted what is stated in para 12 of the counter is not at all correct and relevant facts were not kept in mind. The petitioner medical status, the stress and strain of working in the war unit would affect the health of the petitioner and that had not been taken into account. According to the petitioner the allegations that respondents 4 to 6 were aware of the movement of the war unit in November, 1997 is not at all correct. As a matter of fact, according to learned Counsel for the petitioner, in 1995 itself steps were afoot to move the war unit, and one Lt. Col. Subramanyan was adjusted conferring a favor on him. The learned Counsel referred to para 2 of the counter at page 109 in the following terms:

The petitioner reported to 1 Wireless Experimental Centre located at Delhi on 9th August, 1996 on posting after serving for about two years with 93 Ground Liaison Section Type "C" in Jammu and Kashmir.

27. Learned Counsel for the petitioner submitted that the respondents had not acted in accordance with law and had conferred some favor on Mr. Subrahmanyam and the Military Secretary had not acted in accordance with the principle of natural justice and fair-play. The learned Counsel for the petitioner further submitted that on 23.8.1996 at about 15.30 p.m. telegraphically order was passed posting the petitioner in War Unit and the petitioner himself was informed only in the morning on 24.8.1996 and immediately the petitioner joined duty. According to the learned Counsel, in the case of three officers side stepping was done and the tenure of conditions is maintained but in the case of the petitioner a different attitude was taken and he was shifted from Delhi to outside station. The learned Counsel further submitted that the acts of omission and commission on the part of the respondents would amount to fraud on power and Therefore, the appropriate directions should be given to the respondents to act in accordance with fairness and with reasonableness. He relied upon the judgment of the Supreme Court S. Pratap Singh Vs. The State of Punjab, On 8.3.1997, the petitioner had made the following representation:

IC-33493M Lt. Col. B.K. Sharma

Second-in-Command

33493/BKS/Pers/

12 Field Sub Group

C/O56APO

8 Mar., 97

The Military Secretary,

Army Headquarters

DHQPO New Delhi-11

(Through Proper Channel)

SIDE STEPPING WITHIN THE STATION

Sir,

1. I was posted to 1 WEC from 93 GL Sec C\\O 56 APO vide Army HQ posting Order No. 28283/GL/93 - C/93 dated 30 May, 96. I reported to 1 WEC on 17 Aug., 96. Thereafter, I was ordered to report to 12 Field Sub Group vide Army HQ Posting Order No 387494/33493/ PO/MS-13 dt. 23 Aug., 96. On seeking verbal clarification from MS-13 on change of Unit, I was informed that, I am being side stepped in the station only. Accordingly, I reported to 12 Field Sub Group and was TOS w.e.f. 24 Aug., 96.

2. 12 Field Sub Group has now been ordered to move to Alwar vide Army HQ Sig 2153145-317 dated 20 Feb., 97. NMB being 31 Mar., 97.

3. I would like to submit the following pts for your consideration please.

(a) I have been staying in field areas since Dec., 87 and did not have the opportunity to stay with family for the last eight and half years.

(b) I am low med cat P2 (Permanent) for hypertension with medical restrictions that specialist be available in the station. It has been learnt that no such specialist facility is available in Alwar.

(c) My house in Delhi is under construction and I have already spent appx. Rs. 7 lakhs on the construction of the house. The construction of the house is likely to be completed in next one year. My presence at this crucial stage of construction of the house for which I have already spent my all the savings also from loan financial institutions is very essential. As I am due to retire in Sep., 2000, the construction of the house will be completed well in time.

4. Therefore, keeping in view above mentioned fact, it is requested that I may please be side stepped to any unit/staff appointment in Delhi only.

28. On 4.4.1997, the office of the Military Secretary passing the following order:

Posting: Sigs offers

Ref. your letter No. 570102\\5\\MS-2 dated 26 Mar., 97.

Request for side stepping to any unit\\staff appt in Delhi in respect of IC-3349M Lt Col. (TS) BK Sharma of 12 fd Sub Gp was considered sympathetically by the MS Advisory Committee held on 1 Apl, 97 and not accepted.

The offr may please be info accordingly.

Sd/-

xxxxxxx

(Nitin Kohli)

Lt. Col.

Col. Ms: Sigs & AEC

for Military Secretary

29. The order is signed by Lt. Col. Nitin Kohli purporting to act on behalf of the Military Secretary. The learned Counsel submitted that the constitution of the Military Secretary Advisory Committee is not known and how the case of the petitioner was dealt with by that Committee was not made known to the petitioner and what was the authority of the said Committee to consider the such representation is also not mentioned by the respondents.

30. The learned Counsel in my view made the same complaint and submitted that on 22.4.1997 he made a request in the following terms :

Request for recommendations of SO-in-C for the purpose of Appeal against MS Advisory Committee Ruling dated 1 Apr., 87 in respect of IC-33493 MLT COL B.K. Sharma.

Sir,

1. I would like to submit that I had applied for side stepping to any unit/staff appt in Delhi vide my application No 33493/BKS/Pers dated 8 Mar., 97 but my request was turned down by MS Advisory Committee on 1 Apr., 97,

2. I have followed to bring to your kind notice and sympathetic considerations:

(a) I was commissioned on 29 Apr., 73 and am due to retire on 30 Sep., 2000 in my present rank.

(b) Presently I am a low medical category P (Permanent) for hypertension .

(c) I have been posted to HAA/Field Area/OPRAKSHAK from Dec., 1987 to Aug., 1996 and I could not be with my family during this period.

(d) I was posted to Delhi and reposted to 1 WEC on 17 Aug., 96. I was ordered to report to 12 Field Sub Gp after one week.

(e) My present tenure in Delhi will be probably my last posting since I intend to finally quit the service prematurely.

(f) I have been planning for my post retirement rehabilitation specially in view of my low medical category status, belonging after my old aged parents, my house construction for which purpose I have already spent lot of money and have been meeting/contacting various people in Delhi.

(g) I have served in Signals since 1973 and consider it my right to seek welfare and sympathetic consideration from the Head of the Department.

In view of the above, considering the totality of circumstances it is requested that your recommendations as Head of the Department may kindly be given so that I can appeal against the decision/ruling of the MS Advisory Committee dated 1 Apr., 97 for my continuing Secretary in Delhi.

31. The learned Counsel submitted that no reply had been sent to this. The learned Counsel submitted that once the Military Secretary Branch failed to appreciate the case of the petitioner he had to approach the Head of his Department, Commander Signals, Army Headquarters and the Directorate, Army Headquarters. Signals should have given a reply after considering his representation.

32. The learned Counsel referred to para 15 of the counter at page 113 wherein it is stated that "with regard to averments in para 15 it is submitted that the petitioner did submit an application to respondent No. 3, Which was received and the case of the petitioner was considered in consultation with the Deputy Military Secretary (13) and Additional Military Secretary (A) Army Headquarter who were responsible for placing the officer."

33. Learned Counsel submitted on the basis of this that it is quite understandable when the representation was sent to the Signals Directorate, Military Secretary Advisory Committee, the Deputy Military Secretary, the Additional Military Secretary and Army Headquarters do not come into the picture at all and Therefore, it is clear that the respondents are trying to confuse the issue. I put a question to the learned Counsel for the petitioner as to how did the petitioner make a request on 22.4.1997 to his Head of the Department purporting to be a request for help for a purpose of appeal against the Military Secretary, Advisory Committee when there is no provision for appeal against the decision of the Military Secretary, Advisory Committee and when the petitioner had sought relief from the Head of the Department which is not provided for in the Act or the Rules, the petitioner cannot have any cause to complain. The reply from the learned Counsel was that whether there is any provision or not when the petitioner had made a request to the Directorate Army Headquarters and it was obliged to give a reply to the petitioner. I am afraid the learned Counsel for

the petitioner was trying to bring in extraneous matters in the case and I did not allow the learned Counsel for the petitioner to pursue such a course further.

34. Learned Counsel for the petitioner argued in the same strain about the interview he sought from the Chief of the Army Staff. The learned Counsel submitted that when he wanted to meet the Chief of the Army Staff the petitioner was asked to meet the Brig. Batra who is far junior to the Chief of the Army Staff and the Brig would not have been in a position to help the petitioner when the decision of the Military Secretary, Advisory Committee consisting of Major General and other officers cannot be reviewed by a Brig. The learned Counsel referred to page 41 minutes of the interview recorded and submitted that was contrary to the principle of natural justice.

35. This is outside the ambit of the case. The learned Counsel relied upon the judgment of the Supreme Court reported in Lt.-Col. Prithi Pal Singh Bedi and Others Vs. Union of India (UOI) and Others, The learned Counsel referred to Section 3 of the Army Act, 1950 and submitted that his representation dated 4.4.1997 should have been considered by the department and appropriate direction should be issued to the head of the department to consider his representation. The Learned Counsel again referred to Section 27 of the Army Act, 1950.

36. Learned Counsel referred to Annexure P-XIII which deals with the benefit the officer should be entitled to the same reads as under :

Retirement on superannuation in Nov., 96

ASC, PNRs & SIGs Officers.

1. The officers mentioned in Appendices A & B to this letter are due to retire from Army Service on 30 Nov., 96 (AN) after attaining the age of superannuation in terms of Ministry defense letter Nos A/ 16097/AG/PS-2(c)/3323/D(AG) dated 15 Jun. 74A/49453/AG/ PS2(a)/383-S/D(AG) dated 9 May, 85 and A/4953/AG/PS/2 (a) Minor Corps/D(AG) dated 26 July, 85.

2. The units concerned will forward a copy of Part II orders motifying the details of period of leave for which cash payment is allowed, date of retirement and permanent home address of the officers to this HQ(MS Retirement) and AG(CW-1), GS/ADG System (MISO/ PSG/OMS) and to all concerned including the Zila Sainik Board.

3. The attention of the officers is invited to :

(a) Government of India, Ministry of defense letter No. 15(3)/ 82/1711-A/D(AG) dated 31Dec., 83 as amended and letters No. F.14(3)/88/D(AG) dated 30 Dec. 91 and 10 Jan., 92 regarding encashment of leave.

(b) AO209/76 and this HQ letter No. B/39010/AG/PS4(c) dated 11 Aug., 95 as amended for instructions to be complied with when officers proceed on retirement.

(c) AO3/89 for undergoing medical examination before retirement. Copy of release Medical Board be forwarded to AG/Org-9 and need not be sent to MS Retirement.

(d) SAOs 5/5/78 and 3/5/81 for claiming maturity benefits and provisions of extended insurance cover.

(e) SAO 13/5/82 for grant of furids from AOBf:

(f) AO 27/87 and this HQ letter No. 35072/Policy\\MS retirement dated 19 Oct., 89 for seeking civil employment before retirement. Dte Gen resettlement, West Block-IV, R.K. Puram, New Delhi may be contacted.

(g) SAO2/5/74 and this HQ letter No. 35072/MS Retirement dated 19 May, 89 for grant of Goyt. permission prior to accepting commercial employment or employment under foreign Govt. after retirement.

(h) A brochure "Terminal Benefits on retirement (Officers)" will be issued to the officers by "AGs Brnahc/Org-9, West Block-III, R.K. Puram, New Delhi - 110066 in the form of an Advisory letter.

(i) In case any of the officers mentioned at Appendix "A" to this letter is involved in a disciplinary / quashi-judicial / judicial proceedings or gets involved in any such proceedings subsequent to the issue of this letter, AG/DV-2 at this HQ and the unit/Fmn concerned shall immediately inform this HQ (MS Retirement). CDA(O) AFL Cell Pune and CDA(P) Allahabad.

(j) Attention is also invited to SAO 9/s/80 and this HQ letter No. 35941/Policy/MS Retirement dated 8 May/89 as amended for bringing to the notice of this HQ of non-receipt of retirement order/receipt of defective order by any officer who is due to retire on superannuation on 30 Nov., 96.

The officers may please be informed accordingly.

Please ack.

Sd/-

(R.C. Sulekh)

scso

MS Retirement for Military Secretary.

37. According to the learned Counsel what is stated in this should have been given to the petitioner while considering his case of premature retirement. The learned Counsel sought to derive support from the judgment of the Supreme Court in Smt. Charanjit Kaur Vs. Union of India and others,

38. The learned Counsel also referred to para 4 of the judgment at page 1493 in the following terms:

The respondent-authorities have further stated that the reasons which led to the death of Mukhbain Singh could not be disclosed to her, the same being confidential in nature. It is not disputed that her success in the appeal was dependent upon the case she had to make out, viz., that her husband had died on account of or during military service. For this the enquiry report was very much necessary. Instead, in paragraph 8 of their affidavit-in-reply, they have stated that "the special family pension and children allowance has not been denied to the petitioner. She did not appeal to the Government for a review of their decision in this regard". The case made out in the said paragraph is, Therefore, that since she had not appealed to the Government for a review of their decision, it should be held that she had not been denied the pension and the allowance. It appears that the authorities do not recognise any limit to perversity in reasoning. However, immediately in paragraph 9 thereafter, they contradict themselves and state that "It is humbly submitted that all families of Army Officers are not granted special family pension. Special family pension is granted only when death is considered attributable to or aggravated by military service as defined under Govt. of India letter No. 1(1)/81 /Pen-C dated 22nd March, 1983". The statement in paragraph 8 of the affidavit can, Therefore, only be termed as adding insult to the injury. It is then the case of the respondent-authorities that they had set up a Court of Inquiry on 14.7.1978. The recommendations of the GOC-in-C were recorded on 25.7.1978 with a suggestion that the case be handed over for investigation by CBI to probe the "alleged/suspected murder" of the officer. The civil investigation was carried out by the District Police, Leh in December, 1984 at the behest of 1051 FD Wksp (GREF). They regretted their inability to carry out the detailed investigation at that late stage, due to the following reasons:

- "(a) No factual evidence available in the ground.
- (b) Witnesses are not available.
- (c) No ground study can be made out.
- (d) Officers/staff services of your HQ at that time, has either proceeded in parts or relieved.
- (e) At this stage, it is not possible to trace out any circumstantial evidence if any and thereby obtain the expert views. The Government of India is not study (sic) bound to disclose its findings specially if they are confidential in nature".

In reply to the averments of the petitioner in her petition that her husband was not airlifted on 21.6.1978 because the Commanding Officer had not passed the necessary orders for his evacuation to Ambala Military Hospital, till that day the respondent-authorities in paragraph 13 of their affidavit state that "as the transfer was concurred by OCMH, Ambala on 22nd January, 1978, the officer was sent to the airfield on 23rd January, 1978. The transfer was not an emergency transfer but a routine one for detailed investigations and further management at MH, Ambala. It is submitted that the decision regarding opportune time for

transfer of patient with reference to his medical condition is part of the medical management and is the prerogative of the treating Specialist. Some delay in evacuation resulted from unwillingness of the officer. The officer was under care of Medical Specialist w.e.f. 16th January, 1978 onwards."

It is then stated in paragraph 14 of their affidavit that "the transfer of the officer to MH, Ambala for detailed investigation and further management was concurred in by Officer Commanding MH/Ambala on 22nd January, 1978 and the officer was sent to the airfield on 23rd January 1978. The officer did not board the plane. He had gone to attend some private business in the cook house and later his charred body was found with 98% burns in the serious (condition) as contended in the plaint. As such there was no cause for apprehension." in reply to the petitioner's grievance that she and her children were not permitted to accompany her husband, it is stated that "travel of NOK in the service aircraft evacuating a patient is not permitted under the Army Rules". According to the respondent-authorities, further, the final report from the Civil District Police was received in December, 1984 and the Ministry of defense which is the Competent Authority in deciding attributability aspect for grant of Special Family Pension rejected the case on the basis of inconclusive evidence to show whether the death was "suicide/murder". The petitioner was informed of the authorities' decision by their letter of 15th July, 1985 to appeal against their decision. The respondent-authorities have admitted that the petitioner had sought the Court of Inquiry report vide her letter dated 1st February, 1986 as also the medical record which was refused by them by their letter of 24th June, 1986 on the ground that the documents were confidential. The respondent-authorities have also admitted that the Court of Inquiry could not conclusively prove whether the officer's death was one of murder or of suicide. According to them, every effort was made to ascertain the facts, but final conclusion could not be arrived at. In the end, the respondent-authorities claim that in the circumstances, the writ petition be dismissed.

This judgment was relied upon by the learned Counsel to show that the responsible officers had not filed the counter affidavit inspired by the judgment of the Supreme Court pointing out the defects in the way in which the department of the Army was going about in filing affidavit, in Court. The learned Counsel also pointed out that the person who had filed the counter affidavit had uttered falsehood in the counter affidavit and the same is liable to be rejected and what is stated therein should be struck off. Learned Counsel again relied upon Ex. Major N.R. Ajwani and Others Vs. Union of India and Others,

39. The learned Counsel referred to the way in which the statutory complaint was disposed of and the learned Counsel submitted that in spite of the fact that the statutory complaint was rejected by respondents on 27.10.1997 and the copy of it was placed on record on 28.10.1997 and was handed over to the petitioner on 28.10.1997, the respondents in the counter affidavit to CM No. 6376 of 1997 at page 147 of the typed set wherein it is stated "the complaint is

being process as per the instructions governing the same". This counter was filed on 20th day of November 1997. This averment is absolutely false. The learned Counsel referred to the certificate issued u/s 327 of the Army Act, 1950. The learned Counsel referred to page 151 of the typed set. This counter affidavit was filed in CM No. 7933 of 1997 wherein the respondents have stated that "respondents have no knowledge about the petitioner having proceeded on furlough leave". And about the statutory complaint it is stated "with regard to the statutory complaint it is submitted that the statutory complaint is already pending with the Central Government and will be decided as per the directions of this Hon"ble Court". This again, according to the learned Counsel for the petitioner is a false statement because the statutory complaint was dismissed on 27.10.1997 and the respondents cannot say on 20.11.1997 that the statutory complaint would be decided.

40. The learned Counsel relying upon para 7 of the judgment of the Supreme Court in Smt. Charanjit Kaur Vs. Union of India and others, submitted that there would be a Court of Inquiry under Sections 63 and 69 of the Army Act, 1950 read with Rule 177 against the concerned official and those who are guilty must be suitably punished. The learned Counsel referred to page 111 of the typed set, para 7 of the counter affidavit at page 110 and para 5 of the counter affidavit submitted that the case of the other officers were dealt with differently and the respondents have acted in a discriminatory manner,

41. Learned Counsel submitted that the service conditions of any Government's servant including the Army personnel would include all the benefits an officer would be entitled to under the law anterior and posterior to the retirement including pre-mature retirement.

42. In the scheme of things under the Army Act, 1950 and Rules the Military Secretary is to assist the Chief of the Army Staff. The Military Secretary is acting on its own in an arbitrary fashion on the basis that he is above law and his actions are not subject to any authority the learned Counsel submitted. The learned Counsel referred to the judgment of the Supreme Court in Common Cause A Registered Society Vs. Union of India and others, The learned Counsel referred to B. Prabhakar Rao and Others Vs. State of Andhra Pradesh and Others,

43. The learned Counsel referred to D.S. Nakara and Others Vs. Union of India (UOI),

44. Learned Counsel submitted the retiral benefits payable normally retiring the persons should be given to the persons who are voluntarily retiring. The learned Counsel relied upon para 326 of the defense Service Regulations which states as under :

#### Treatment of Subordinates

Officers, JCOs, WOs and NCOs will adopt towards subordinates or equal and junior ranks such methods of command and treatment as will not only ensure

respect for authority, but also foster the feelings of self-respect and personal honour essential to military efficiency. They will avoid intemperate language or an offensive manner.

45. The learned Counsel also referred to the policy dated 23.12.1996 wherein the terms pre-mature retirement is defined in the following terms:

Definition: The term "Premature Retirement" will apply only to permanent Commissioned Officers who have rendered 10 years or more of service and are eligible for retiring gratuity or pension and retirement gratuity (admissible after 20 years of qualifying service) and who wish to retire before the date of superannuation.

46. The learned Counsel also relied upon the opinion of the author Mr. Edwin G. Boring in his book Psychology for the Armed Services wherein the author has mentioned that morale should be maintained and the War Departments Division of information and Education has fixed upon four attributes, of good morale as follows:

Zeal--the voluntary "plus" which a man gives to his task, over and beyond perfunctory obedience to regulations.

Discipline--in General Marshall's words, "cheerful and understanding subordination of the individual to the good of the team".

Self-confidence--basic sense of personal worth, founded on a realistic appraisal of what the job is like and on confidence in past training and present leadership.

Satisfaction--freedom from discontent and worry (not the mere absence of griping); fundamental satisfaction with one's day to day part in the war effort:

47. According to the learned Counsel such a morale should be maintained. The learned Counsel relied upon the judgment of the Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, . The learned Counsel attempted to show how the respondents should be directed to act in accordance with law. The learned Counsel with a view to pressing his point grew somewhat philosophical and cited verse No. 21 Chapter III from Bhagvat Gita.

48. While concluding his arguments learned Counsel for the petitioner prayed for the following relief:

(a) To reinstate the petitioner with peace Unit 1 Wireless Experimental Centre at Delhi in terms of petitioner's request posting vide Army Headquarters letter dated 30.05.1996 (Annexure P-III) with all consequential benefits.

(b) Permit the petitioner to submit fresh application for request/ premature retirement and the petitioner would be allowed preretirement period of one year before his actual date of retirement as is being followed in the case of Army officers retiring on superannuation.

(c) in the era of ever expanding horizon of social justice, in our 50th year of

Independence, the Central Government may be directed to constitute defense Adalats (on the lines of Lok Adalat, Bijli Adalat etc.) where the defense personnel could be represented by Lawyers.

(d) Central Government should look into the functioning of Military Secretary Branch, Army Headquarters.

(e) Army Personnel are allowed to have personal interview of the Chief of Army Staff under the provisions of Army Act Section 3(iv) read with Regulations for Army 4(b).

(f) A Court of Inquiry be ordered by the Chief of Army Staff under Army Rule 177 read with Sections 63 and 69 of the Army Act, in the matter of false averments having been made in the reply filed on behalf of Army Authorities, in the course of proceedings in this writ petition.

(g) The classification of medical status and scope of medical attention being provided to Army personnel be suitably amended, keeping in mind the latest trends in the field of preservation of bodily health, as per the law recently settled by the Hon''ble Supreme Court of India.

49. Learned Counsel for the respondent 1 Mr. Sarabjit Sharma submitted that the petitioner wants to achieve two things, first is that he wants to fix the date of his voluntary retirement at his own choice. Second is that the petitioner wants to avail of the last leg posting. The learned Counsel for the respondents submitted that at the time of interview on 4.6.1997, the petitioner himself mentioned the purpose of his interview in the following terms:

RECORD OF INTERVIEW: IC 33493M

LT COL (TS) B.K. SHARMA

12 FD SUB GROUP

Ref 12 FD Sub Gp letter No. 1862/01/Sigs dated 23 May, 97.

The offr was interviewed by the Dy MS(Sigs) on 4 Jun., 97 on behalf of the Military Secretary. Record of the interview is alt for info of the offr.

Date of interview Particulars of officers Purpose of visit Remarks.

4. Jun 97 IC-33493 M Lt. Col (TS) B.K. Sharma 12 Fd Sub Gp The offr brought out that he had requested for getting side stepped to any unit/staff appt on compassionate ground/last let posting. He has requested for side stepping because he is due to retire in 2000 and he is constructing a house in Delhi. He brought out that he was posted to Delhi only in Aug., 96 and his unit. 12 Fd Sub Gp has been ordered to move to Alwar. (1) The offr was interviewed by the Dy MS(Sigs) on behalf of MS.(2) No fresh points were brought out. by the offr. (3) Dy MS (Sigs) conveyed to the offr that his request for side stepping him to any unit in Delhi for the same reasons has already been rejected by MS Advisory Committee and it is not feasible to accede to his request due to org and

management constraints. He asked the offr to move as ordered.

50. Therefore, the petitioner did not project is ailment as one of the purposes of his interview. The learned Counsel Mr. Sarabjit Sharma referred to para 3 of the counter affidavit which is in the following terms :

On 23rd August, 1996 he was issued orders for side stepping to another unit located in same station viz. 12 Field Sub Group due to the following considerations:

(a) The Commanding officer 12 Field Sub Group felt that IC-28794 Lt. Col. (TS) P. Subramanyan, then posted as Second in Command, did not have requisite experience of specialist requirements of the unit.

(b) Lt. Co. (TS) P. Subrahmanyam, was left with two years service before he superannuate on 31st May, 1998. Therefore, detailing the said officer on a training course to learn new techniques was not considered to be beneficial to the state.

(c) IC-48490 Maj. N.K. Tewari was also posted out from 12 Field Sub Group in August, 96 leaving the unit without adequate experienced hands.

51. It is clear from the above facts that the petitioner's case was considered by the respondents and the respondents required the service of the petitioner in the Unit which was shifted to Alwar. Mr. Sarabjit Sharma, learned Counsel for the respondents submitted that if the request made by the petitioner at the instance of the Military personnel is allowed the Army cannot at all function and the request of the petitioner is totally unreasonable.

52. Mr. Sarabjit Sharma also submitted that the petitioner was transferred to Delhi on 23.8.1996. In February, 1997 orders relating to the movement of the Unit was made and the Unit was actually moved on 21.7.1997.

53. The learned Counsel submitted that the order of transfer cannot be challenged in view of the judgment of the Supreme Court in Union of India and another Vs. N.P. Thomas, for the proposition when an employee is holding of transferable post have no vested right to remain in original place. In State of Punjab and others Vs. Joginder Singh Dhatt, , the Supreme Court held "it is entirely for employer to decide when, where and at what point of time a public servant is transferred from his present post. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer."

54. I have considered the arguments of the learned Counsel for the parties. The petitioner's contention is that he cannot transferred outside Delhi and nowhere he could get the medical facilities that are available in Delhi for the ailment he has been suffering from. This contention cannot be sustained. The petitioner has been projecting his case only for the purpose of being retained in Delhi. The petitioner has challenged the various acts of the respondents and in particular the movement of the Unit in February, 1997. The learned Counsel for the

petitioner asserted that the respondents were well aware of the movement of the Unit to Alwar long before February, 1997 and deliberately the petitioner was shifted to that Unit. The learned Counsel for the petitioner imputed mala fide against the third and fifth respondents. The petitioner has also challenged the requirement of pre-mature retirement being submitted four months from the date of actual retirement or intended retirement.

55. The Supreme Court in *Sterling Computers Limited v. M. & N. Publications Limited and Ors.*, JT 1993 (1) S.C. 187 approved the statement of law in *Chief Constable of the North Wales Police V Evans* (1982) 3 All Er 141 wherein it was said "the purpose of Judicial Review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment, reaches on a matter which it is authorised or enjoined by law to decide for itself a conclusion which is correct in the eyes of the Court. Their Lordships also approved of the view of the House of Lords in the same case whether they stated that the Courts can certainly examine whether decision making process was reasonable, rational and not arbitrary. The House of Lords in *Council of Civil Service Unions and Ors. v. Minister for the Civil Service*, (1984) 3 All ER 935 held :

Administrative action is subject to control by judicial review under three heads: (1) illegality, where the decision-making authority has been guilty of an error of law, e.g. by purporting to exercise a power it does not possess; (2) irrationality, where the decision making authority has acted so unreasonably that no reasonable authority would have made the decision; (3) procedural impropriety, where the decision-making authority has failed in its duty to act fairly.

56. In this case the petitioner's objective is to be work in Delhi and that the respondents 1 to 4 should permit him, to voluntarily retire on his own terms. "

57. I am not able to find any irrationality or unfairness in the approach made by respondents 1 to 4. The petitioner has not made out any case for interference by this Court. Accordingly, the writ petition stands dismissed. There shall be no order as to costs.