

(2010) 09 DEL CK 0071

In the Delhi High Court

Case No : Writ Petition (C.) No. 7415 of 2009

Union of India (UOI)

APPELLANT

Vs

Manoranjan Kumar and Others

RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Major Port Trusts Act, 1963 — Section 7, 7(1)

Citation : (2010) 172 DLT 726

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Parag P. Tripathi, ASG, V.S.R. Krishna and Arti Gupta, for the Appellant; K.K. Rai Neeraj Gupta, Sachin Lohia and Jayant Pawar for R-1, R.V. Sinha and A.S. Singh for CVC, for the Respondent

Judgement

Mool Chand Garg, J.—By this writ petition filed under Article 226/227 of the Constitution of India the petitioner/UOI is praying for quashing and setting aside the order of the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') passed on 25.02.2009 in O.A. No. 1769/2008 whereby the Tribunal had set aside the order dated 08.08.2008 repatriating Manoranjan Kumar (hereinafter referred to as 'the respondent'), a deputationist, to his parent department after holding, that, 'the real reason behind repatriating the applicant to his parent department was in fact the complaints/reports made by him and not the complaints that may have been received against him. Reference to the various complaints against the applicant in the notes preceding the repatriation order, and that being the reason for repatriating him, appears to be a made-up affair. It is quite apparent that a substantial number of persons yielding power felt threatened and insecure on the reports made by the applicant. It is because of the influence exerted by them upon the competent authority, it is apparent, the applicant was sent back to his parent cadre. The order of repatriation, in our considered view, is mala fide.'

2. In the impugned order the Tribunal also observed:

Fraud, conspiracy and mala fides vitiate everything, and if, therefore, the order repatriating the applicant is actuated on account of mala fides, the same has to be quashed. We are conscious that allegations of fraud, conspiracy and mala fides cannot be proved by direct evidence. Such issues can be proved or, may be, inferred, by circumstances. It is often said that men may lie but the circumstances don't. A vast load of circumstances, as fully detailed above, would lead us to an irresistible conclusion that the applicant who wanted to clean the system, has in turn been himself washed away by the system. We are distressed to note that the applicant, because of his bold stand, exposing misdeeds, corruption and irregularities, instead of being protected by the system, has in fact been victimized.

3. Taking strong objection to the aforesaid observation of the Tribunal, the learned ASG representing the UOI has submitted that the order of repatriation is an incidence of service and is subject to pleasure of the appointing authority. In this case it was not that the Government was taking any adverse action against the first respondent. The Government has taken a decision to repatriate the first respondent because he was not found suitable to continue in the post where he was sent on deputation. The order repatriating him was neither stigmatic nor is mala fide but is based upon appreciation of facts which came to the notice of the competent authority making the respondent as unsuitable for the post of Deputy Chairman, Kandla Port Trust.

4. It has been submitted that considering the tone and tenor in the correspondence exchanged by respondent with his seniors and allegations made by him against the Chairman of the Port Trust, besides his hesitation in contributing in the functioning of the Port Trust activities, the competent authority being satisfied the work and conduct of the respondent was no satisfactory took his decision in public interest to repatriate him to his parent department. They have also relied upon the following Judgments:-

(a) L/NK V.H.K. Murthy v. Special Protection Group, 2000 (IV) AD (Delhi)

(b) Chandra Prakash Shahi v. State of U.P. (2005) 5 SCC 152, Para 28-29 at page 167.

(c) D.K. Rao Vs. Government of India and Others,

5. Before we revert to the facts of this case, we may discuss about the rights of a deputationist as spelt out by a coordinate bench of this Court in L/Nk V.H.K. Murthy's case (supra). The relevant observations are as under:

23. After all, even otherwise, what are the rights of a deputationists?

24. It is now well settled that deputation is just a transfer of a Government employee from one department to another or from one Government to another, i.e. from Central Government to State Government or State Government to State Government or State Government to Central Government. So in its very nature, the tenure of a deputationist is a precarious one. Of course, in some cases, it

may be for a fixed term, but even then it is implicit that a deputationist can always be repatriated to his parent State/Department in public interest or in the exigencies of service. Further, a deputationist continues to hold lien on his permanent post in his parent cadre till of course he is permanently absorbed in the borrowing department. Another wholesome principle is that if many persons are drafted to serve on deputation, their inter-seniority in the borrowing department should be respected and preserved during the period of such deputation to the new department.: K. Madhavan and Another Vs. Union of India (UOI) and Others, wherein it was observed: "There is not much difference between deputation and transfer. Indeed when a deputationist is permanently absorbed in the CBI, he is under the rules appointed on transfer. In other words, deputation may be regarded as a transfer from one Government to another." It is thus manifest that a deputationist has no right to the post held by him in the borrowing department and he can always be repatriated to his parent department in public interest and exigencies of service. This right of the borrowing department to repatriate the employee and for that matter right of the lending department to recall their own employee sent on deputation, is well recognised in service jurisprudence.

25. For these reasons I am also inclined to accept the submissions made by Mr. Maninder Singh learned Counsel for the respondents that the tenure of deputation can be curtailed for bona fide reasons and in the instant case the moment it is found that "suitability" of an officer has attracted a question mark, it is permissible for the respondents to repatriate said officer to his parent department. For this reason the Constitutional Bench judgment of Supreme Court cited by the petitioners in the case of K.H. Phadnis Vs. State of Maharashtra, may not be of any help to the petitioners. First as I have already pointed out above, the sensitive nature of the duties is to be kept in mind which is the hallmark of the present case. Secondly, even as per the aforesaid judgment of the Supreme Court "unsuitability" would be a valid ground to repatriate an officer. Thirdly, since petitioners have no vested right to remain in SPG for complete period of six years, the question of observance of Principles of Natural Justice, before sending a person back to his parent department would not arise, inasmuch as the repatriation of these petitioners is as per the terms of contract and the judgment of Supreme Court in the case of Kaushal Kishore Shukla (Supra) comes handy.

26. Of course, it is not to suggest that the respondents have right to act in an arbitrary manner or they can use the sensitive nature of job to be performed by the petitioners as a cover to use the power of repatriation as a colourable exercise of power. The judicial power of review can be exercised on the basis of accepted norms i.e. to say when it is found that the action of the respondents suffers from the vice of arbitrariness or mala fides etc. However, once it is found that the action is bona fide and the apprehension of the respondents is based on some relevant considerations then this court has to stay its hands off. Further keeping in view the sensitive of job to be performed by the petitioners, the

discretion which is conferred upon the competent authority has to be wide and even a doubt, of course genuine doubt, nurturing in the mind of the respondents, which may become the basis of their decision not to keep a particular officer in SPG any longer would meet the test of bona fide exercise of power.

6. The Apex Court in the case of Union of India (UOI) through Govt. of Pondicherry and Another Vs. V. Ramakrishnan and Others, has also observed:

32. Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice. (See Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia SCC para 25.)

7. It would also be appropriate to discuss the judgment of the Division Bench of Andhra Pradesh High Court in the case of D.K. Rao (supra), who had been also deputed to work as Deputy Chairman of Visakhapatnam Port Trust and whose tenure was also curtailed by ordering his repatriation to his parent cadre. In this case, D.K. Rao has raised similar pleas as have been raised by the respondent before us. The Court has made the following observations:

8. We find force in the contention of the learned counsel for the Central Government. The case relied on by the learned counsel for the appellant (Agarwal's case 1 supra) is distinguishable since in that case the officer who was appointed on a tenure basis for a period of 5 years was sought to be retired on attaining the age of superannuation. It is not a case of deputation and the question of the officer going back to the parent department where he had substantive post does not arise in that case. As it was a tenure post, the Supreme Court held that the concept of superannuation is alien to such a post. As already seen, Section 7(1) of the Act says that the Chairman and Deputy Chairman hold office during the pleasure of the Central Government. Thus, the appointment order must be read along with Section 7(1) of the Act and if so read, it follows that the appellant is entitled to hold the post of Deputy Chairman in the normal course for a period of 4 years, but without prejudice to the right of the Central Government to withdraw him at any time before expiry of 4 years. Further, even if the appointment order is construed by itself without reference to Section 7(1) of the Act, it does not preclude the lending department to withdraw the officer and repatriate him to the parent department as held by the High Court of Allahabad in Shambu Nath's case 1984 (2) SLR 396 (Allahabad).

9. The second contention of the learned Counsel for the appellant is that in the absence of any request from the parent department, i.e., the Government of Gujarat, the appellant cannot be repatriated. It must be remembered that the appellant was sent to the Port Trust not on the request or at the instance of the Government of Gujarat, but at the instance of Government of India which is the appointing authority regarding the post of Deputy Chairman of the Port Trust. The Government of Gujarat has no say either in sending the appellant to the Port Trust or repatriating him to the Government of Gujarat. Thus, there is no substance in this contention.

8. In view of the aforesaid it has been averred that the repatriation order being an order simplicitor and not being an order in the nature of punishment was fully justified. The said order was issued by the Petitioner after recording the reasons about unsuitability of the respondent taken in the larger interest of the development of the Port especially in a situation where in the officers Association, Karamchari Sangh, stakeholders as also the Chamber of Commerce and industry were not happy with the functioning of the Respondent who was not even respectful to his immediate superior. It is not that a disciplinary action has been taken against respondent after accepting veracity of the complaints received against him, but have taken the said decision only with a view to repatriate him being satisfied that his continuance as Deputy Chairman was not conducive either to the efficient working of KPT or to fostering of better interpersonal relations among senior port functionaries.

9. Coming to the facts of the case right from the beginning, a vacancy circular was issued on 02.01.2005 inviting applications for filling up the post of Deputy Chairman, Kandla Port Trust on deputation basis. The Respondent an IES Officer applied for the post and on 13.02.2007 an appointment order was issued to the Respondent appointing him to the post of Dy. Chairman. Another fact to reckon with in this case is that subsequent to his appointment, on 11.07.2007 he was given the additional charge of Chief Vigilance officer. While holding both the posts simultaneously the Respondent in his capacity as the CVO submitted 8 reports pointing out the corruption and other wrongdoings going on in KPT by senior officers including Ex-Chairmen of the Trust resulting into registration of criminal cases by the Central Bureau of Investigation. It has been alleged that the Ex-Chairman of KPT, was involved in large scale corruption and acts of misdemeanor in having extended land lease for a further period of 30 years without following the proper procedure.

10. In the meantime, some complaints started pouring in against the respondent besides the report of the Trust Chairmen. The details of the complaints are as under:

(i) Complaints dated 10.11.2007, 19.11.2007, 19.12.2007, 25.03.2008, 26.03.2008, 7.7.2008 and 18.07.2008 (forwarded by Cabinet Secretariat) made by Mohan K. Aswani, Genl. Secretary, INTUC (Gujarat).

- (ii) Complaint dated 20.11.2007 made by Kandla Port Trust Association.
- (iii) Complaint dated 02.02.2008 made by Kandla Port Karamchari Sangh.
- (iv) Complaint dated 08.04.2008 made by Shri H.C. Venkatesh, Traffic Manager, KPT.
- (iv) Anonymous complaint dated 19.04.2008 forwarded by Chairman, KPT.
- (v) Complaint dated 29.01.2008 made by Sh. Krishnan A, FA/CAO, KPT.
- (vi) Complaint dated 18.04.2008 made by Gandhidham chamber of Commerce and Industry.

11. According to the learned ASG in addition to the aforesaid complaints, the unsuitability of the respondent is writ large if one scans through the documents placed on record by the petitioner along with CM No. 8960/2010, which application has been allowed by us vide separate order passed today. The documents brought on record by the petitioner are as under:

- (i) Letters dated 23.05.2008 and 11.07.2008 written by respondent to his superior officer viz. the Chairman.
- (ii) The recommendations of the respondent in the Annual Confidential Report of three officers viz. Mr. H.C. Venkatesh, Traffic Manager, KPT, Capt. H.K. Sibbal, Dy. Conservator, KPT and Mr. A.K. Gadkari, Chief Mechanical Engineer.
- (iii) Extracts from various original files of Kandla Port Trust which were placed before this Court at the time when the arguments were addressed on behalf of the petitioners which show that respondent as Dy. Chairman would invariably remark in many of file notings that "The Chairman may like to take view or For kind orders or May kindly see for orders?" without adding or recommending anything.
- (iv) A copy of the departmental files concerning the processing of the issue of hiring of tugs at the Kandla Port and subsequently the complaint filed by the respondent.
- (v) A copy of the departmental files concerning the handling of two container vessels at ABG Kandla Container Terminal at the Kandla Port and subsequently the complaint filed by the respondent.
- (vi) A copy of the departmental files of two cases viz. Indo-Nippon case and Instrumentation case at the Kandla Port.
- (vii) A copy of the list of the status of the complaints filed by Manoranjan Kumar, CVO with CBI.

12. It has been submitted that a bare perusal of the aforesaid documents and complaints besides the letters written by the respondent reflect upon his personality and reveals that he was not suitable to work as Deputy Chairman,

KPT any further. In these circumstances, it is submitted that the simplicitor order of repatriation was passed without reaching to any conclusion as regards the culpability/misconduct of respondent.

13. The petitioner further submits that a deputationist has no right to remain in deputation post even if the period of the deputation is curtailed and in the present case the provisions of Section 7 of the Major Port Act applied and hence the repatriation order is not erroneous in law or is tainted with mala fide. It is further stated that the order of repatriation has nothing to do with the gradings given in the ACR. Respondent had no vested right to continue on deputation post. The competent authority had the right to repatriate him at any point of time even by curtailing his tenure.

14. It is also submitted by the petitioner that the investigation qua the charges levied against the officers by the respondent is in progress but till date no charge sheet has been filed in any court of law. It is thus submitted that order of repatriation impugned before the Tribunal was not stigmatic in nature and was issued by the petitioner keeping in view the overall interest of the Port.

15. On the other hand, the learned Counsel for the respondent supports the judgment delivered by the Tribunal and insists that the order of repatriation was mala fide and stigmatic in nature.

16. It is also submitted that the order of repatriation virtually amounted to remove the respondent as CVO and thus it was also contrary to the guidelines of CVC. As the purpose of repatriation was to somehow remove the respondent from the post of CVO at which post he was working on account of additional charge given to him which enabled him to expose large scale corruption and irregularities and illegalities committed by the persons who had been placed at high places in KPT who appears to have joined hands to somehow send respondent back to his parent department. It has been submitted that almost all the reports submitted by respondent to CVC and to higher authorities, action has been taken against the guilty officials who even include the ex Chairman of the KPT. It is also his case that even for the intervening period after the first order was withdrawn to repatriate him he was not permitted to breathe freely and was fettered with all clogs in discharging his duties.

17. It is also submitted by them that this court is not supposed to interfere with the findings of facts while exercising its jurisdiction while issuing Writ of certiorari. The limit of the jurisdiction of the High Court in this regard has been considered by the Apex Court in the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, and the following propositions were laid down:

(1) Certiorari will be issued for correcting errors of jurisdiction;

(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice;

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or Tribunal, even they be erroneous.

(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision.

18. It is also submitted that the deputation of the respondent was on a tenure post and that the impugned order speak of 'curtailing deputation tenure' and that it is not a tenure post has not been questioned by Union of India. It is stated that it was an appointment after proper selection and the tenure of five years could not have been curtailed. It is also submitted that the complaints against the respondent started pouring in after he was given the additional charge of CVO, KPT on 11.07.2007 and on his submitting various reports. There has been no complaint whatsoever while he was working on his substantive post of Deputy Chairman.

19. It is also submitted that the vigilance reports submitted by respondent prima facie disclosed the involvement of senior officers of the KPT including ex-chairmen of the Trust in large scale land scam running into thousands of crores, unauthorized use of land, awarding contracts and tenders without following due procedure thereby giving undue pecuniary advantages to a chosen few, unauthorized extension of leases, etc. The reports have been duly acted upon and only those who are reported upon are the complainant against the respondent. It is submitted that the very purpose of repatriating respondent is to remove inconvenient CVO, for which he was removed from the post of Deputy Chairman, KPT, a fact noted by the Tribunal which is even contrary to CVC guidelines.

20. It is also submitted that the Tribunal has noted the performance of respondent in paragraph 3 of the impugned judgment. It has also noted the data of the Indian Port Association filed by the petitioner. Therefore, bogey of non-performance is bogus.

21. It is also submitted that even the letter of Sh. Praveen Aggarwal filed with the counter affidavit is bereft of Annexures. These have been mechanically relied upon by the Government without discussing other aspects. It is also submitted that interpersonal letters between respondent and Chairman have not been relied upon by the Government while relieving respondent. These have to be understood in the particular context of respondent being victimized by him.

22. It is submitted that the judicial system is bound to protect the honest officials who are hounded because of sincere discharge of duties. Hounding of the civil servants protecting public monies and public interest by abuse of service hierarchy, if not tackled would devour public administration and good governance.

23. Counsel for respondent further relied upon the following judgments:

1. Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others,
2. Kandla Port Karamchari Sangh v. Union of India, Special Civil Application No. 6963/2005.
3. Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others,
4. Tandon Brothers v. State of West Bengal and Ors. (2005) 5 SCC 33.

24. Let us now look at the order repatriating the respondent to his parent department dated 08.08.2010 which reads as under:

A-12023/5/2008-PE.I

Dated 08/08/2008

Order No. 17/2008

Whereas Shri Manoranjan Kumar was appointed as Deputy Chairman of KPT vide Department of Shipping communication dated 07.09.2006 and

Whereas in terms of Section 7 of Major Port Trusts Act, the Dy. Chairman of a port holds the office during the pleasure of the Central Government and

Whereas the Central Government has withdrawn the pleasure on continuance of Shri Manoranjan Kumar as Dy.Chairman of KPT.

Now therefore Shri Manoranjan Kumar (IES:86) is hereby relieved of his duties as Dy.Chairman and CVO of Kandla Port Trust and is repatriated to his parent cadre curtailing his deputation tenure. Shr. G.S.Rao COM (OOT) shall take over the charge of Dy.Chairman and CVO till further orders.

(Rakesh Srivastava)

Joint Secretary to the Government of India

To

1. Shri Manoranj Kumar, IES
2. Shri G.S.Rao Deputy Chairman, COM(OOT)
- Kandla Port Trust Kandla Port Trust Kandla Kandla

25. We may also refer to background note leading to the passing of the aforesaid order mention whereof has been made by the Tribunal in the impugned order. We reproduce the same for clarity:-

Shri Manoranjan Kumar (IES:86) was appointed as Dy. Chairman of Kandla Port Trust (KPT) vide order dated 07.09.2006. Prior to joining in KPT, he was working as PS to HonDble Ministry for Textiles, Shri S.S. Vaghela. Subsequently he was given the charge of CVO of the Port as additional charge by the Department. Ever since his joining, this deptt. Has been getting numerous complaints against Shri Manoranjan Kumar. Many such complaints were anonymous/pseudonymous

in nature. On the basis of several such complaints against Shri Manoranjan Kumar, orders relieving him from duties of Dy. Chairman were issued with the approval of Hon^{ble} Minister (S,RT&H). However, the relieving orders were subsequently withdrawn in the wake of a stay from Hon^{ble} CAT and he was allowed to continue to function as Dy. Chairman.

2. The complaints against him continued to pour in the Ministry even after assignment of charge of Chairman, KPT to Shri Praveen Agarwal, Chairman, Margao Port Trust. The Chairman-in-charge has written to us about the various activities of Shri Manoranjan Kumar that are hindering the progress of the Port. It was also pointed out by the present Chairman that his continuance in the Port is creating adverse effect on the development of the Port. He has also highlighted the fact that the Dy. Chairman is not contributing for the development of the Port, rather he is acting as a stumbling block on the development of the Port. This being the present status of the Kandla Port, it would be worthwhile to examine the complaints received against Shri Manoranjan Kumar in some more detail.

3. Shri M.K. Aswani, General Secretary, INTUC in his complaint dated 10.11.07 had accused Shri Manoranjan Kumar of misusing his official position as CVO and making vague and unwarranted reports to the higher authorities with the intention to mislead them while continuing his dishonest activities. He also alleged Shri Kumar of discouraging trade and users for business at Kandla by asking them to opt for other private ports, bringing in political influence to the Government, making huge expenditure in addition/ alteration of his chamber and Port allotted bungalow, delaying Project proposals of KPT, etc. etc. It was also alleged that the Dy. Chairman had instigated the unions to go on strike.

4. The then chairman, KPT on these complaints had commented in his letter 29.01.08, that ever since Shri Manoranjan Kumar had taken over as Dy. Chairman, the proposal submitted by various HODs have been getting delayed for final disposal as he was in the habit of seeking irrelevant details which delayed the proposals. Chairman had also stated that he was in the habit of behaving with officers in a threatening manner and suspicious angle giving embarrassment to the officers in their day to day working.

5. Other HODs of KPT had also commented that the Dy. Chairman had developed an attitude of suspecting foul play in almost every activity of the Port by belittling the dignity and integrity of his subordinates and he has failed to maintain cordial relations with employees thereby vitiating the office atmosphere and creating an environment of ill-will, hatred and groupism in the Port which demoralizes many senior officers in the Port and was also the reason for slow development of the Port.

6. Shri Mohan K. Aswani in his subsequent letter dated 19.11.07 had alleged that the Dy. Chairman was trying to influence users of the Port by threatening them and boasting about his connection with senior officers at Delhi. In his letter dated

19.12.07 again Shri Aswani had highlighted the adverse effect the Port was facing because of the way of functioning of the Dy. Chairman.

7. Subsequently this deptt. Has also received a representation from Secretary, KPT OfficersD Association highlighting the demoralization of officers on account of the functioning of the Dy. Chairman. They had highlighted the failure on the part of the Dy. Chairman in slowing down the Port related work while alleging the numerous amounts of money spent by the Dy. Chairman for renovation of his accommodation and also for providing security guards at his accommodation.

8. Another complaint was received from Kandla Port Karamchari Sangh besides other complaints from Shri Aswani dated 25.3.08 and 26.3.08 requesting for a stern action against Shri Manoranjan Kumar. They have alleged that his activities in KPT were meant to help private ports nearby. In addition, Shri H.C. Venkatesh, Tariff Manager of KPT vide his complaint dated 8.4.08 has also alleged that Shri Manoranjan Kumar had shown disrespect to National Commission for SC/ST by willfully refusing to meet its Chairman on his visit to KPT.

9. In his report dated 20.5.08, the Chairman of KPT had made the following observations:

(a) Shri Manoranjan Kumar's contribution to even routine work was found to be counterproductive and insignificant. His negative approach to the work of his subordinates and superiors alike has obstructed the smooth flow of work. His notings on the files are not only bereft of any constructive suggestions or guidance but sometimes are of even threatening nature. My official instructions relating to the works are treated by him with prejudice. In the Board Meeting held on 24.3.2008, he being the Trustee from Port side, instead of supporting an Agenda Item on Dredging, was trying to find faults on the Item and was not only fighting tooth and nail to ensure that the item is rejected by the Board, but was also unbecoming an officer of the Board.

(b) The Gandhidham Chamber of Commerce and Industry also vide their letter No. GCCI/808 dated 8.12.2007 addressed to the Hon"ble Prime Minister of India forwarded by Ministry of Shipping under letter No. PT-17011/1/2008-PT dated 3.1.2008 criticised the working style of Shri Manoranjan Kumar, Dy. Chairman and CVO and requested to investigate the matter and replace the unfriendly and negative official from KPT to avoid tarnishing the good image of KPT maintained so far.

He apparently had a secret meeting with Shri Ashok Bhatt, Hon"ble Home Minister and Speaker of Gujarat Legislative Assembly during his visit to Gandhidham on 13.4.2008 on the eve of inauguration of newly constructed SRC A.O. Building and provided him complete details of KPT lands, possibly with a view to facilitate Gujarat State taking over Vadinar and Kandla Township Land. This seems to have been confirmed by Shri Ashok Bhatt during his inaugural speech on the occasion.

(c) He is habituated to evade responsibility and prefers to remain on leave even though he is commanding number two position in the Port and his continuous inaction to various proposals of the organization has led to a disturbed working atmosphere and the Heads of Department of the Port are compelled to request for sanction of the Chairman through Fax and Telephone from Goa. Instead of guiding his subordinates and assisting his superior, he always prefers to report the matter of KPT directly to the CVC and the Ministry without the knowledge of the chairman.

10. Earlier Shri Praveen Agarwal had forwarded an anonymous letter along with a CD received by him containing portion of a speech made by Home Minister of Gujarat. It had been mentioned that Shri Manoranjan Kumar had been persuading BJP Legislators and Ministers of Gujarat State to take over the administration of Kandla Port offshore lands.

11. In their letter dated 18.4.08, Gandhidham Chamber of Commerce and Industry have also requested for transfer of Shri Manoranjan Kumar from Kandla for the better development of the Port. In addition,

12. As stated in para 1 above, based on similar complaints only, it was decided at the level of HonDble Minister to relieve Shri Manoranjan Kumar from the post of Dy. Chairman. However, he was reinstated as the said order was stayed by the HonDble CAT in its interim order dated 8.2.2008. Now in its order dated 11.7.08 the Hon"ble CAT, in a self contained judgement covering all the related issues, has upheld the Govts right to take appropriate measures as situations might justify. Also in an identical court case in 1993 filed by Shri D. K. Rao, the then Dy. Chairman, VPT, the Andhra Pradesh High Court had held that pre-mature termination of deputation was not by way of punishment and that deputation was at the pleasure of Central Govt. u/s 7(1) of the Major Port Trusts Act. In other words, the Principal Bench of CAT in the case filed by Shri Manoranjan Kumar and HonDble High Court of AP in the case filed by Shri D. K. Rao have endorsed the authority of the Central Govt. as per the provisions of MPT Act in the matter of continuance or otherwise of deputation of an officer as Dy. Chairman in a Port. As per Section 7 of the Major Port Trusts Act the Chairman and Dy. Chairman shall hold office during the pleasure of the Central Govt.

13. To sum up, from the foregoing facts it is clear that the acts of omission and commission on the part of Shri Manoranjan Kumar, while functioning as Dy. Chairman have been detrimental to the development/growth of Kandla Port. This Port was occupying number 1 position in 2006-07 in terms of Cargo Handling and now has slipped down. The style of functioning of Shri Manoranjan Kumar might have a negative and demoralizing effect on the officers and employees of the port. This is also reflected in their lower output in various port operations. The Chairman has categorically stated that the Dy. Chairmans contribution to the port has been nil and in fact his presence in the port is having an adverse effect to the port.

14. This being the position, the Govt. may consider repatriating him to his parent department by prematurely reverting him from the deputation in public interest. This being an action on administrative exigencies, in no way should be considered as a punitive action against the officer. The pleasure of the govt. as envisaged u/s 7 of the Major Port Trusts Act may be withdrawn so that he can be repatriated to his parent cadre.

15. In the event his repatriation is ordered, it may also be considered whether an officer of the Department, preferably DS(PO) may be asked to take the charge of the post of Dy. Chairman and Chief Vigilance Officer, KPT, as additional charge, till regular arrangements are made. This would also ensure immediate implementation of our orders, if issued.

Submitted for orders please.

On the same day, when the note was put up to Dir. (PHRD), he recorded as follows:

As desired, the complaints received in PE have been examined and the above description indicates the environment situation in KPT due to complaints against the present Dy. Chairman and its negative impact on the working of the port. Submitted for orders please.

On the same day again, the matter appears to have been put up before JS(P), who recorded the following note:

Notes above for kind perusal. The continuance of Shri Manoranjan Kumar as Dy. Chairman & CVO of KPT is not conducive either to the efficient working of KPT nor to fostering better interpersonal relations among senior port functionaries. He may be repatriated to his parent cadre with immediate effect.

In terms of a High court order in respect of Shri D. K. Rao, then Dy. Ch. of VPT, this is not to be construed as a punitive action. The most recent CAT order in Shri Manoranjan Kumar's case empowers the GoI to take such action against the official.

Paras 14 & 15 of pg. N/7 are submitted for approval.

Vide the very next note on the very same day, i.e., 7.8.2008, a decision was taken by Secretary (S), Ministry of Shipping, Road Transport & Highways, to give additional charge of Deputy Chairman & CVO, KPT to Shri G. S. Rao, being the senior most HOD. Draft order for approval was prepared on 8.8.2008, and on the very same date, it is admitted position, the applicant was relieved and repatriated.

26. We need not discuss the other complaints which have been considered in the aforesaid note prior to the decision to repatriate the respondent but the report of the Chairmen KPT dated 20.05.2008 needs mention. The said letter reads as under:

No.KPC/5001-II/173

dated the 20th May, 2008

Shri P. Sasikumar,

Under Secretary to Govt. of India,

Ministry of Shipping, RT & H,

Deptt. of Shipping,

Transport Bhavan,

1-Parliament Street,

New Delhi ? 110001.

Sub: Complaint against Deputy Chairman & C.V.O., KPT ? reg.

Sir,

I have to refer to your letter No. C-16011/2/2008-PE.I dated 17.04.2007 received here on 16.05.2008 on the above subject.

I have gone through the comments of the then Chairman, KPT sent under the two letters bearing No. KPC/5004 dated 29.01.2008. Under these letters, the then Chairman has furnished comments on the complaints filed by (1) Secretary, Kandla Port Officers' Association; and (2) Shri Mohan Aswani, Kandla Port Karamchari Sangh respectively against Shri Manoranjan Kumar, Deputy Chairman and C.V.O. Based on my experience as Chairman, KPT since February 22nd 2008 and after closely observing the working style of Shri Manoranjan Kumar, Deputy Chairman and C.V.O., I fully endorse the views expressed by the then Chairman in his aforesaid two letters dated 29.01.2008.

Further, Shri Manoranjan Kumar's contribution to even routine works was found to be counterproductive and insignificant. His negative approach to the work of his sub-ordinates and superiors alike has obstructed the smooth flow of work. His notings on the files are not bereft of any constructive suggestions or guidance but sometimes are of even threatening nature. My official instructions relating to the works are treated by him with prejudice. In the Board Meeting held on 24.03.2008, he being the Trustee from Port side, instead of supporting an Agenda Item on Dredging, was trying to find faults on the Item and was not only fighting tooth and nail to ensure that the Item is rejected by the Board, but was also unbecoming an officer of the Board. An extract of the discussion held by him in the Board Meeting of 24.03.2008 is enclosed. (Annex-I)

Apprehending that his additional assignment as C.V.O. will hamper the smooth functioning of the Port and his continued threatening to the Officers using the CVO's position as a tool, a proposal to discontinue him as CVO was moved by me under letter No. KPC/4002-Vig./67 dated 28.02.2008. (Annex-II)

The Gandhidham Chamber of Commerce and Industry also vide their letter No. GCCI/808 dated 08.12.2007 addressed to the Hon?ble Prime Minister of India forwarded by Ministry of Shipping under letter No. PETITIONER-17011/1/2008-PETITIONER dated 03.01.2008 criticized the working style of Shri Manoranjan Kumar, Deputy Chairman and CVO and requested to investigate the matter and replace the unfriendly and negative official from KPT to avoid tarnishing the good image of KPT maintained so far.

Also his behavior unbecoming of an official of KPT is reflected below:

(i) He apparently had a Secret Meeting with Shri Ashok Bhatt, Hon?ble Home Minister and Speaker of Gujarat Legislative Assembly during his visit to Gandhidham on 13.04.2008 on the eve of inauguration of newly constructed S.R.C.A.O. Building and provided him complete details of KPT Lands possibly with a view to facilitate Gujarat State taking over Vadinar and Kandla Township Land. This seems to have been confirmed by Shri Ashok Bhatt during his inaugural speech on the occasion. This was communicated to the Secretary (Shipping) under my Confidential Letter No. KPT/2008 dated 19.04.2008. (Annex-IV)

(ii) During the visit of Regional Director, National Commission for Schedules Castes and Scheduled Tribes at Kandla on 25.03.2008, he has allegedly not cooperated with the Commission and remained away from the meetings deliberately. This was communicated by the Traffic Manager, KPT who was forced to preside over the Meeting in the absence of Deputy Chairman (Chairman being out of station on the particular day), under his letter dated 08.04.2008 addressed to the Secretary (Shipping) which was forwarded by the Ministry for my comments under letter No. C-16011/2/2009-PE-I dated 28.04.2008. (Annex-V)

(iii) He is habituated to evade responsibility and prefers to remain on leave even though he is commanding number two position in the port and his continuous inaction to various proposals of the organization has led to disturbed working atmosphere and the Heads of Departments of the Port are compelled to request for sanction of the Chairman through Fax and Telephone from Goa. Instead of guiding his subordinates and assisting his superior, he always prefers to report the matters of KPT directly to the VC and the Ministry without the knowledge of Chairman.

Immediate needful action in the matter is, therefore, requested.

Yours faithfully,

(Praveen Agarwal)

Chairman

27. This report is also a reason in taking the impugned decision as is apparent from the reading of the note mentioned in paragraph 25 above.

28. We have gone through the written submissions filed by both the parties as

also the impugned order of the Tribunal. The tribunal has set aside the order of repatriation primarily on the following assumptions:

(i) The respondent was officer who was having ACR grading outstanding/very good throughout his tenure in Indian Economic Service in his parent department. He was also given similar grading for the limited period for which he worked as Deputy Chairman of the Kandla Port Trust till such time he was assigned the duties as CVO.

(ii) The clock reversed when the respondent was given additional charge to work as CVO, KPT and he submitted 8 reports indicting senior functionaries involved with the Port Trust activities in the past including the Ex-Chairman for having committed criminal offences and misdemeanor of a magnitude which called for severe actions against them. The reports were taken into consideration by the authorities and in fact even CBI investigation was also ordered.

(iii) The complaints against the respondent are the handiwork of the persons who were adversely affected by his action as CVO. In this regard, the Tribunal has also taken note of certain orders passed by the Chairman of the Port Trust in denuding him of his responsibilities as CVO and some of essential activities relating to administration of Port Trust which they also says is mala fide. In this regard, the Tribunal has also made the following observations:

35. What emerges from the facts as fully detailed above is that some of the reports of the applicant have since already been accepted and action taken, and his reports as CVO, on the basis of which action has been taken, are being defended in the Gujarat High Court in two different cases by the respondents. In the reply filed in the Gujarat High Court, it is clearly mentioned that the Chairman(ex) had not taken prior approval of the Central Government with regard to the lease, and further that without permission of competent authority, the then Chairman approved the request of the petitioner for change of use. Without approval, it is mentioned, the permission would fall within the meaning of criminal misconduct under Prevention of Corruption Act. It is admitted position that the Kandla Port Trust was utilized for promoting business interests of the petitioner, despite protest of the applicant as late as in July, 2007, when permission was granted by the Chairman for certain purposes. The role of the Chairman and others has been adversely commented upon in the reply. With regard to some of the reports, action has already been taken by CBI, and with regard to others action is in offing. With regard to some of the matters, of course, no action has been taken so far. It clearly transpires that a substantial number of reports of the applicant have been acted upon and action taken. None of the reports submitted by him so far have been opined by any of the authorities to be false, and yet, the respondents would have audacity to make a positive averment at every relevant place that the applicant instead of devoting his time to the development of the port was involving himself in making frivolous complaints. It is also pleaded that keeping in view the applicants conduct of making repeated frivolous complaints against all officers and sundry and even

against officials of the Ministry of Shipping who have nothing to do with the so called land scam, and further since the work of KPT was suffering due to these internecine squabbles between the officers, it was felt that the best course in the interest of the Port would be to curtail the period of deputation of the applicant. The applicant is alleged to have made reckless allegations and raised unnecessary issues.

29. The Tribunal has further noted that even the CVC in their reply in OA bearing No. 302/2008 (another matter) have admitted that they have received the reports made by the respondent and that the report of the respondent was for taking actions against the concerned persons, which, of course, it was decided to be taken only after Gujarat Assembly Election.

30. We may further point out that no formal reply was filed by the CVC in this case. On their non-filing of any formal reply, the Tribunal further observed:

37. ...It is also admitted that on the report of the applicant with regard to irregularities, action has been initiated. CVC being a party to these proceedings, their not filing the reply despite the controversy being such where their stand could have thrown some light upon veracity of the complaints made by the applicant, would lead us to draw an adverse inference. If the reply thus would have been filed by CVC, we are of the view it would have perhaps no choice but for to support the case of the applicant, insofar as the authenticity of his reports is concerned. We may also draw an inference that it is because of the influence exerted by the powers that be that CVC has not filed reply. Be that as it may, there are some admissions made by CVC in the earlier OA filed by the applicant. There is not a word with regard to any report made by the applicant being frivolous. It would be another circumstance to hold that the plea raised by the applicant that the reports made by him in discharge of his duties were with a view to eradicate mass-scale irregularities and corruption is correct, and the converse stand taken by the respondents that such complaints were frivolous, has to be rejected.

31. It may however be observed that while passing the impugned order the Tribunal has discussed the complaint made against the respondent on merits but has not commented upon the tone and tenor of the letters written by the respondent to his senior officers. The petitioners strongly rely upon this aspect of the matter to support the order of repatriation. In this regard, we would first notice the report of Shri Praveen Agarwal, who was the Chairman of the Trust, dated 20.05.2008 as aforesaid.

32. This report reflects upon the working style of respondent as Deputy Chairman and CVO. Mr. Aggarwal has also referred to unsatisfactory performance of respondent and has described his contribution as counterproductive and insignificant. He has also highlighted his negative approach towards his subordinates and superiors alike which was obstructing smooth flow of working. He has also made reference to the notings on the file which reflects casual and

irresponsible approach of the respondent.

33. Even if for the sake of arguments it may be taken that Shri Praveen Agarwal had any grudge against respondent while writing the aforesaid letter, then also respondent had no business to write letters dated 23.05.2008 and 10.07.2008 to his immediate Boss and endorsing copies of those letters to the Secretary, Department of Shipping, Government of India.

34. The two letters written by the petitioner before his repatriation which reveal impropriety in his tone and tenor, towards his immediate senior officer, are reproduced hereunder:

DO. No. T/KPDC/1035/2008(A)/45 Dated 23rd May, 2008

Dear Mr. Agarwal,

This has reference to your order as Chairman on Additional Charge basis of KPT No. KPC/500/5001-II/161 dated 10th May, 2008 and letter No. KPC/5004/170 dated 20th May 2008 addressed to Secretary KPT and copied to me. You have made several false statements in letter dated 10th May 2008 and generated false records for ulterior motive of causing injury to me and my interest.

I must stated that you are willfully and deliberately generating false harm the rights and inherent rights of your immediate junior since records to the day you arrived to KPT on Additional Charge basis as Chairman KPT. I also notice that you were not the senior most Chairman of nearby Major Ports nor were you heading the nearest Major Ports. Conscious of full background of you and you proximity to those who had, in past for ulterior reasons, made attempts to get rid of me, at least administratively, I am not surprised by your ceaseless efforts to pursue unabated mala fide against me. You debarred me malafidely from two Board meetings where you deliberated a major contract. May be you are still preparing fresh grounds to keep me out of future Board Meetings of KPT for reasons that are malafide.

From the very first day of your arrival you generated false records, ostensibly indicating your proximity to power that be in the Ministry, and issued three orders on 22nd and 23rd February 2008. Senior officers of the Ministry have now sworn an affidavit in a court of law that the said orders issued by you did not have their approval. Thus you caused injury to me and my rights willfully and malafidely.

By your predilection to indulge in false assertion, insinuation, false statement, mischievous imputations, your propensity to fabricate records, etc., I consider now it appropriate to place certain facts in reference of your above mentioned letter so that the records at least speak of your malafide against me.

a) You are hiding your whereabouts and tour programme from me, i.e., your Dy CEO, while you intermittently visit KPT. Your availability at KPT or otherwise are not known nor are they circulated to officers.

b) It is noticed that despite proper intimation to you and to your office in writing on 8th May 2008 you continued to pretend that I am in Port Colony. You had earlier not taken my call on your mobile twice in the morning of 8th May 2008 and then later on in that afternoon too. Nor did you call me back.

c) Thereafter, you ignored my application seeking leave on health grounds and the fact that I am proceeding to Delhi.

You also directed your PS to send a letter through speed post at my Port Colony address knowing fully well that I am not there. I contacted you on your mobile. This time again you did not take my call.

d) Thereafter, you were contacted on your mobile through SMS that was delivered to both you and your PS on 10th May 2008 at 4.55 PM and 4.58 PM respectively. The SMS said ?have you sent a letter at my residential address at Kandla Port address? By Speed Post? I am in Delhi and on rest as per medical advice. Anything Important?? Yet again for ulterior reasons you chose to ignore and not respond to my sms. Though your PS belatedly informed me the next day through SMS that ?chairman has forwarded a letter of ministry about a complaint for your comments.?

e) I contacted him on phone. He informed me that the leave application was seen by you. The leave application showed that I am in Delhi.

f) I did not receive any call from your office or from you even subsequently.

g) Yet for ulterior reasons you instructed Deputy Secretary (E)/Secretary (KPT) to send a file to my residence in KPT colony. Are these conduct(s) of yours administrative prudence? Are they not aimed to cause anguish and injury to me and my rights? Is that your mandate?

In view of the above mentioned facts and your partiality, I am not aghast to know that you imputed false meanings on my leave, its genuineness, my leave address etc. You chose to latch on to technical clause of leave address in Delhi not being available in application despite the same being on your record in KPT. You ignored my ready availability on mobile phone. You willfully did not place on records the fact that you did not take my call on several occasions. You willfully hid the fact that you received my SMS.

I am afraid I have little option but to accept the harsh reality that your false insinuation, deliberately generation of false records and fabricating facts on file is a part of your administrative wisdom while dealing with issues and persons that do not sub-serve your personal predilections/objectives or when officers do not agree with your scheme of things or do not agree with your design.

In this connection may I request you to recall letters of SEZ Commissioner Shri Ravi Saxena (IAS : 78) number KASEZ/DC/PA/2008 dated 15th May 2008. You will notice that he has reached similar conclusion on minutes of Board Meeting relating to 24th March 2008.

You will notice that Area Railway Manager has also scripted your failure to record correct facts relating to Board Meeting of 11th March 2008 and 24th March 2008 which substantiates your malafide to cause injury to me and my rights.

Before that Customs Commissioner has also conveyed to you his reservations on not presenting his views and facts correctly to suit your convenience on a tender matter. Thus on generation of wrong and false information on records of Government by you, I see a trend which is rare in senior civil servants.

I am pretty certain the Board will be reconstituted. And the inability of these officers to be nominated to the Board of Trustees will be taken advantage by you to "generate" records as per your sweet will. If that is what the Central Government wishes to have so be it.

Yours sincerely,

(Manoranjan Kumar)

Shri Praveen Agarwal,

Chairman Mormugao Port Trust

& Chairman KPT on Additional Charge Basis

KPT Administrative Building

Gandhidham

CC:

Secretary, Department of Shipping, Government of India, Transport Bhawan, 1-Parliament Street Delhi for information that unnecessary injury is caused to me by Shri Praveen Agarwal an appointee of the Department of Shipping and for appropriate remedial measures?

Manoranjan Kumar

Deputy Chairman &

CVO

D.O. No. KPDC/1014-CVO/2008/49

Dated 26/05/2008

Dear Shri Praveen Agarwal,

This is in continuation of your letter No. KPC/5001-II/136 dated 22nd April, 2008, my letter No. T/KPDC/1035/2008/18 dated 25/04/2008 and your confidential letter No. KPC/5001-II/161 dated 10.05.2008. It is regrettable that your focus continues to be an ?inconvenient Deputy Chairman & CVO? rather than the development affairs of the Port.

2. I have mentioned in my letter dated 25th April, 2008 that you have taken

cognizance of malicious and anonymous letter with the sole motive to demoralize me and humiliate me so as to minimize my ability and time to protect the public exchequer. The CD has confirmed my suspicion.

3. I have gone through the anonymous complaint, your insinuation and the said doctored CD yet again. The so called anonymous complainant has claimed that Deputy Chairman provided him (Mr.Bhatt) complete land so as to facilitate Gujarat State in taking over Vadinar and Kandla Township Land:.

4. You have however, due to your malafide, in your said order No. KPC/5001-II/136 dated 22.04.2008 claimed that I have provided complete details of KPT land to facilitate Gujarat State in taking over Vadinar and Kandla Township land. Despite being Chairman of Major Port for considerable period and despite being well versed in MPT Act and despite 30 years of IRS experience you deliberately did not take cognizance that the land of KPT is of Central Government and can in no way be taken over by State Govt. Yet you chose to seek my explanation on anonymous letter clearly overlooking the concerns of vigilance manual and its stipulations. You continued and reiterated your malafide through a reminder despite my cogent explanation. All this was conspired by you to meet your malafide objective of harming me, my rights and my reputation. You were conscious that I was in Delhi due to sickness yet to cause injury to me you sent this letter.

5. I notice that you have also falsely claimed in your above mentioned order dated 22.4.2008 that allegation is stated to have been confirmed by Mr. Ashok Bhatt during his inaugural speech on the occasion?. Even the doctored CD and the voice track of the person delivering speech do not mention the following words land?, Kandla?, KPT?, Vandinar? and township? etc in the speech. How did you include this in your order dated 22.4.2008. The words have not been mentioned in the audio of the said CD that you furnished. You have however falsely claimed that Shri Bhatt confirmed it. Did you go through the CD before you sought my explanation? Please stop from falsifying government records. I wonder with what malafide you reached such outrageous conclusions and deemed it proper to ask for my explanation on anonymous/ pseudonymous complaints.

6. Thus, the allegations leveled by you through the said anonymous letter is not corroborated by the CD furnished by you.

7. So far as the CD is concerned, it is noticed that it is edited and doctored?. The face of the person delivering the speech is not shown. I am not in the gathering. I do not recognize any person in the gathering other than spouse of trade Promotion & Public Relation Officer of KPT who is an architect of considerable repute. The context of the statement and the statement do not validate your assertions. Yet you opt to call it my misconduct and ask for my explanation. What a shame!

8. It is also seen that the edited and doctored CD that you have forwarded to me

has not been initialed or signed by you so as to allow you the benefit to claim later on that I have not appropriately or fully dealt with the matter in the CD. Please confirm you have no other CD on this matter.

9. Your letter exhibits your malafide against me. I am aware that you had several interactions with my detractors for getting anonymous letters prepared against me to subserve your malafide intention. It is learnt that the letter that you claim as anonymous was 'obtained' through a courier at your Mormogao Port office. Despite being fully aware of the background of the said anonymous letter I chose to tender my response to you vide my letter No. T/KPDC/1035/2008/18 dated 25/04/2008. However, to further the malicious intentions of yours you have not taken my letter on record and are showing the same as pending before me in your above order No. KPC/501-II/161 dated 10/05/2008. It appears that either your personal staff is failing you or you are over-enthusiastic in casting mischievous aspersion on me with a view to cause injury to me and to my rights.

10. Your malafide against me has been placed before the Hon'ble Central Administrative Tribunal and the Hon'ble Tribunal has also taken note of the same in the OA 302/08, CP 104/08 and MA 449/08. The Hon'ble Tribunal has noted your malafide intention vis-a-vis me.

11. Having suffered your malafide for such a long period, I reproduce below the gist of my letter No. T/KPDC/1035/2008/18 dated 25/4/2008 so that you are not able to deal with my reply separately and show only part reply to the Ministry:

? At the outset, I would like to bring forth to your notice that the central Vigilance Commission vide its Order No. 3(v)/99/2 dated 29th June, 1999 has observed that the anonymous and pseudonymous complaints become a convenient loophole for blackmailing. The Commission has directed that no action should at all be taken on anonymous and pseudonymous complaints. Yet you have chosen to not only take cognizance of an anonymous complaint but also impose a 72 hours binding-time period on me to respond to a mischievous and malafide complaint. This was despite the fact that you knew I am required to be in Delhi on 23rd April to meet certain statutory responsibilities.

? You are aware that I am an ex-officio Director on the Board of Sindhu Resettlement Corporation as Dy. Chairman of Kandla Port trust.

? I deny the entire allegation which is fabricated, motivated and cryptic.

? My interactions with officials of the Sindhu Resettlement Corporation today confirmed that neither the local MLA nor the MP, who belong to BJP Party, were present at the time of Pooja Ceremony which I attended during the Pooja function of opening of Administrative Office Building of Sindhu Resettlement Corporation at Adipur. Not the Public gathering as you may conveniently presume.

? Earlier also, within 24 hours of your arrival at Kandla Port Trust, you have exposed your malafide intention to harm my inherent rights, interest and reputation by any means. On fabricated ground, citing certain orders from the

Government of India, Department of Shipping, you have chosen to pass disparaging remark about me. Your action was malafide. You continued with your exercise of somehow fabricating Government records, so as to obtain from the competent authority an order that suits your malafide design. In this respect it is noticed that you have, without taking cognizance of the facts, passed disparaging remark about me in handling of Court Cases in the matter of M/s Friends Salt Works & Allied Industries Ltd., Allotment of 94 plots (Re-tendering thereof) etc. It may kindly be recalled that these Court Case files were dealt with by you under your instructions by Estate Division. These were not shown to me for considerably a long period of time, a period during which you approved appointment of Advocate for KPT and you also got affidavit filed by KPT. Yet you chose to put the blame at my door.

? Your order No. KPC/5001-I/136 dated 22nd April, 2008 yet again substantiates that your ceaseless malice against me continues and that the Ministry despite several letters in this respect to them, have for reasons best known to them, not acted against you.

12. I have a strong suspicion that the CD is ?edited and doctored? to suit your convenience. I noticed that the person whose voice is on the CD do not even know that I am associated with KPT. He is talking about the development in Gujarat. Despite knowing all this willfully you have defamed me through your two letters. You have also leaked the information about this so called show cause notice to others including newspapers.

13. Thus, your decision to seek my explanation vide order dated 22.4.2008 and dated 10.05.2008 are designed to subserve your malafide of harming me, my interest and my reputation. You are hereby advised to withdraw forthwith your orders No. KPC/5001-II/136 dated 22.04.2008 and subsequent letters on the same under intimation to me. You are also advised to convey the same with due apology to all concerned to whom you may have written in this context or copied or endorsed the said orders.

Yours sincerely

Sd/-

(Manoranjan Kumar)

Shri Praveen Agarwal,

Chairman Mormugao Port Trust

(Additional Charge KPT)

Gandhidham

35. It will also be appropriate to take note of the letter dated 10.07.008 written to Shri Praveen Aggarwal, the Chairman of the Trust:-

D.O. No. KPDC/1014-CVO/Ch./79

Date: 10/07/2008

Dear Shri Praveen Agarwal,

Your willingness to create false records with ulterior motives from the very first day of your arrival is known to me and the same has been adjudicated before the Hon"ble Central Administrative Tribunal, New Delhi which termed your actions and orders as malafide.

Since you are posted on purely temporary basis as Chairman, KPT on additional charge basis, I notice you are trying to unnecessarily charge on my productive time and energy on flimsy matters so that serious matters of KPT remain unattended. Accordingly, I am not joining the issues which in my considered view are false, fabricated and mischievous.

I also noticed that in a letter No. GA/GN/0314/219 dated 15th June, 2008 addressed to The Secretary, GoI, in para No. 6 you have recorded ?May I also suggest that vigilance references made by Shri Manoranjan Kumar should be generally subjected to careful scrutiny and analysis, and it may also be seen whether some other officials who could have been implicated in the referred cases, have been let off deliberately. This suggestion is made in the light of the fact that his references are motivated by vested interests and are highly subjective at times.?

As is usual, you are in habit of passing generalized comments without any basis. Your statement that some other officials have not been implicated in the referred cases is not true and devoid of any cogent reasoning. Would you please bring out the specific case(s)? I advise you to withdraw the said observations and extend unqualified regrets for inserting baseless allegations.

Yours sincerely,

(Manoranjan Kumar)

Shri Praveen Agarwal,

Chairman, KPT (On additional Charge basis)

Gandhidham

36. Besides the tone and tenor of these letters, further objectionable portion is his writing in letter dated 23.05.2008, which is reproduced hereunder:

I am pretty certain the Board will be reconstituted. And the inability of these officers to be nominated to the Board of Trustees will be taken advantage by you to "generate" records as per your sweet will. If that is what the Central Government wishes to have so be it.

37. Further, paragraph 13 of the letter dated 26.05.2008 is also improper, the same reads as under:

13. Thus, your decision to seek my explanation vide order dated 22.4.2008 and dated 10.05.2008 are designed to subserve you malafide of harming me, my interest and my reputation. You are hereby advised to withdraw forthwith your orders No. KPC/5001-II/136 dated 22.04.2008 and subsequent letters on the same under intimation to me. You are also advised to convey the same with due apology to all concerned to whom you may have written in this context or copied or endorsed the said orders.

38. The other documents which have been permitted to be taken on record by allowing CM No. 8960/2010 also raises eyebrow on the conduct of the respondent inasmuch as he wrote ACRs of Mr. H.C. Venkatesh, Traffic Manager, KPT, Capt. H.K. Sibbal, Dy. Conservator, KPT and Mr. A.K. Gadkari, Chief Mechanical Engineer. Respondent has taken a highly contradictory view by first giving three officers, namely, excellent gradings on their ACR and after taking over the charge of CVO ordered initiation of prosecution against the very same officers. Same is reflective of his conduct when we go through the file pertaining to issuing of hiring of tugs at the Port and the handling of two container vessel at ABG Kandla. Similar is the position with regard to the case pertaining to Indo-Nippon and instrumentation case at the Port. It is also a matter of record that in almost 80 per cent of the complaints lodged by the respondent which went for investigation by CBI, proceedings were dropped. A chart of action taken report about various reports as placed on record by the petitioners along with the CM is reproduced hereunder:

S. No. Name Designation Functions CBI Findings

1. Shri Venkatesh Traffic Manager Head of Traffic Exonerated in (Two Cases) Department one case and which handles CBI has import of export recommended of cargo RAD in another case. Dated:11-01- 2010 and 29-03-2010

2 Capt HK Sibbal Deputy Head of Marine CBI has (one case) Conservator Department recommended which handles RDA. Dated: 2- movement of 12-2009 ships

3 Shri AK Gadkari Chief Head of KPT has been Mechanical Mechanical intimated by CBI Engineer Department that they have which maintains dropped the equipment, case. electrical etc. Dated 7.0.2010

4 Shri RT Traffic Manager As given at KPT has been Revankar (ex) Sl. No. 1 intimated by CBI that they have dropped the case. Date 7.01.2010

5 Shri A Krishnan FA & CAO Head of Finance Exonerated in (two cases) Department one case. In the other case KPT has been informed by CBI that they have dropped the case.

6. Ms Rajashree Dy. FA & CAO Dy. Head of Exonerated by Dabke Finance CBI Department 2-12-2009

7 Shri BK Chief Engineer Head of civil CBI has Makhwana engineering recommended department RDA. which is taking care of all Dated 11-01-infrastructure 2010 needs

8 Shri Deepak Jain Dy. Secretary Estate Has not been Estate Management pursued by CBI due to expiry of Shri Jain. 11-01-2010

9 Shri KC Vyan Estate Manager Estate Prosecution Management sanction sought 11-01-2010

10 A Janardhana Chairman Head of the CBI has Rao (two cases) organization recommended prosecution in one case and in another case, they have recommended RDA.

11 J.K. Chauhan and Ass Estate Estate Prosecution other staff Manager and department and sanction sought staff Finance 11-01-2010 Department

12 Shri B. Tewari Secretary Administration Prosecution and Estate sanction sought Division by CBI. However, Ministry has not agreed to CBI's recommendatio ns and has recommended RDA for major penalty.

39. Merely because an officer had good ACR grading and might have worked efficiently at an earlier point of time and also proved to be a Good CVO, the employer in this case i.e. the petitioners if not satisfied regarding his overall suitability for the post on which he has been sent on deputation only for a specified period was certainly entitled to withdraw their pleasure in permitting him to continue on the post. If the pleasure is withdrawn without any harm to the incumbent and without taking any action pursuant to the complaints lodged against him, even if it is accepted that those complaints had been lodged by interested parties, it would not be a case which calls for any interference by a judicial Tribunal to quash such orders repatriating respondent to his parent cadre.

40. The judgments cited by the respondent have been gone into by us, which had been given in the given facts but we are afraid that looking at the canvass in its totality is of no help to the case of the respondent.

41. It is well settled that deputation of an employee requires three parties i.e. the employee, the parent department and the borrowing department. Either of them may decide not to continue with the deputation. Until and unless such action is stigmatic, mala fide or is harmful to the interests of employee sent on deputation, it cannot be said that action on the part of the employer to repatriate the employee to his parent cadre was unjustified. In fact such a view negates the provisions contained u/s 7 of the Major Port Trust Act.

42. In this regard, it would relevant to take note of judgment of this Court in WP(C)No.12773/2009 entitled as Shri Sitamber Singh v. Union of India (UOI) and Anr., decided on 15.07.2010. The relevant portion is reproduced hereunder:

In service jurisprudence, "deputation" is described as an assignment of an employee of an department or cadre to another department or cadre. The

necessity for sending on deputation arises in "public interest" to meet the exigencies of "public services". The concept of deputation is based upon consent and voluntary decision of the employer to lend the services of his employee, corresponding acceptance of such service by the borrowing employer and the consent of the employee to go on deputation. A deputation subsists so long as the parties to this tripartite agreement do not abrogate it. However, if any one of the parties repudiate the agreement, the other two have no legally enforceable right to insist upon continuance of the deputation. Even in the cases where deputationists continue for a pretty long period and options for their "absorption" in the borrowing department were taken, yet their repatriation to the parent department was upheld by the Apex Court in *Ratilal B. Soni and others Vs. State of Gujarat and others*, after holding that "the appellants being on deputation, they could be repatriated to their parent cadre at any time and they do not get any right to be absorbed on the deputation post.

"Deputation" per se being a contractually made ad hoc arrangement, seldom confers any right upon a deputationist, either for completion of the term of deputation or regularization of such stopgap arrangement. The judgments relied upon by the learned Counsel for the College in this regard squarely answer the controversy.

43. We may like to observe here that the petitioners have not initiated any adverse action on the basis of complaints made against respondent by various persons as detailed above. The conduct of respondent reflects that once he became CVO, he started acting as a super boss and started behaving improperly even qua the Chairman of the Trust. This is writ large from his communication to the Chairperson as quoted above after endorsing copies of such communication even to the Secretary in the Shipping Ministry and goes to show that such a person may not be suitable for the job which in fact is in the nature of a temporary appointment and therefore, if a decision is taken to curtail his period of deputation, which even as per the appointment letter could have been curtailed, taking into consideration Section 7 of the Major Port Trust Act without causing any harm to respondent requires to be upheld. At this juncture we may observe here that the respondent was not sent on deputation to work as CVO which was an additional charge given to him though strictly speaking should not have been given to him in view of the guidelines of CVC as such appointment should go to an outsider. Consequently, we find that despite a long judgment given by the Tribunal we cannot uphold the same and therefore, we set aside the same. The writ petition is accordingly allowed with no order as to costs. Interim order, if any, stands vacated.

44. Before parting with the case, we would like to note that while we have gone on the basis of law relating to the rights of an employee who is on deputation, we cannot be oblivious of the fact that respondent took on a problem that besets much of government functioning and it is quite possible that in the process, he rubbed many on the wrong side. It is noteworthy that there is no complaint of

financial irregularity against him.

45. The overall conspectus makes it clear that here there was a crusader whose mission upset many. The path he chose was not easy to tread, but that he had courage of conviction is something to be commended and not penalized. While we may not approve of the tenor of his letters, we cannot lose sight of the human trait and frailties that an individual working with zeal against heavy odds in his quest to expose wrongs in an organization exhibits, when faced with a constant tirade for his removal, rather an obstruction in his mission, in which process he is bound to commit an error in his choice of words.

46. It appears that facing continued and stiff resistance to his crusade, he overreacted and wrote in a language that was unbecoming. But that cannot be a ground for clinging on to a post which as per the Rules he can be relieved of. We would, therefore, end this judgment with a note that nothing stated herein would tantamount to reflecting anything on the conduct of respondent so as to enable the authorities to take any adverse action against him.