

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

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OA. NO. 125/2002

New Delhi this 24th day of March 2003

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

S.R. Korada S/o Sh. Korada Paidithalli,
R/O 390 A, Chirag Delhi,
New Delhi.

.....Applicant

(By Shri Kumar Parimal , Advocate)

VERSUS

1. Union of India though
the Secretary,
Dept. of Scientific and Industrial Research
Anusandhan Bhawan, CSIR Building,
Rafi Marg, New Delhi
2. Sh. Jagdish Singh
Scientist 'G'
Dept. of Scientific and Industrial Research
Technology Bhawan,
New Mehrauli Road, New Delhi

.....Respondents

(By Shri N S Mehta, Advocate)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Challenge in this OA is directed against the
transfer order No. 1/32/2001- Admn/DSIR dated 10.1.2002,
issued by the respondents.

2. Heard S/Shri Kumar Parimal and N S Mehta
appearing for the applicant and the respondents respectively.

3. The applicant - S.R. Korada - joined Deptt. of
Scientific and Industrial Research (DSIR) as Scientific
Officer 'B' in 1994 and was promoted as Scientist 'C' w.e.f.
1.1.2000, which was delayed on account of the respondents not

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holding the Screening Committee on time, on account of which two of his seniors went above him. He was an expert in Agricultural Microbiology. But by the impugned order he has been transferred to 'PATSER' Division dealing with Engineering discipline, which will make performance difficult for him and land him in problems during FCS - Flexible Complementing Scheme - the Scheme for assessing performance of Scientists in his organisation. This was another example of harassment being meted out to him, with other persons not qualified in Agriculture Science being assigned the work which should have been given to him. His requests for visits to certain places, provision for certain ~~boards~~ ^{beats}, were other indications of this bias. His filing OA No.2478/2001, against his transfer to PATSER Division and obtaining a stay on 21.9.2001, further infuriated the respondents; but on persuasion by the respondents, he withdrew the same. Thereafter the respondents issued him a charge sheet on 13.12.2001, which has been stayed on 21.12.2001, by the Tribunal in his OA 3391/2001. This OA is against the transfer.

4. Grounds raised in this OA are that:

- i) the transfer of the applicant to PATSER was malafide;
- ii) the applicant is being harassed repeatedly by repeated and unfair transfer;
- iii) utilisation of his service in the Govt. has not been done properly;
- iv) the transfer has not been in public interest and has been in violation of articles 14 & 16 of the Constitution;
- v) he has been replaced by a non- agricultural science which was also bad.

In the above circumstances the order transferring him to PATSER should be cancelled, urges the applicant.

5. Respondents point out that the applicant has suppressed material facts. The impugned order dated 10.1.2002, was not a fresh order, but withdrawal of an order dated 27.9.2002, issued following the Tribunal's order dated 21.9.2001, in OA No.2478/2001, granting him interim relief, which stood vacated as the OA was withdrawn. So the order which had been kept in abeyance had been given effect to. The applicant had also not exhausted departmental remedies before approaching the Tribunal. The applicant who was recruited as Senior Scientific Officer Grade II in October 1994, was considered by the Screening Committee after DoPT granting one time relaxation of the criterion of marks and there has been no delay. These two individuals, who are alleged to have gained seniority over him in fat were direct recruits as Scientist 'C'. The matter regarding his Ph.D. Degree is still undecided as he has not been able to produce either the original or certified copy of the certificate. All the complaints of malafide raised by the applicant are false and baseless. DSIR was the administrative Deptt. of Council of Scientific and Industrial Research (CSIR), National Research Development Corporation (NRDT), Central Electronic Lt (CEL) and Consultancy Development Centre (CDC). DSIR was not generally a research organisation but concerned with advancement planning monitoring, approval of Scientific activities and these cover all important and relevant industrial sectors covering areas of technology such as in chemicals, drugs, electrical, mechanical and telecommunication engineering, agricultural and social sciences etc. This being the case DSIR had never committed that the officers having particular expertise in a given

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field will be required to work only in the same discipline. In fact the officers have to work in and show their worth in their work as well as in cross-sectoral schemes. The applicant cannot therefore have any grievance. ~~his~~ ^{his} Allegation that he had been denied facilities of training, boards etc. are totally baseless.

6. Both in the rejoinder and during the oral submissions the applicant and the respondents reiterate their pleadings without much modification. Sh. Kumar Parimal, learned counsel for the applicant pleads that the applicant who has been harshly treated should be rendered justice, Sh. N S Mehta, Sr. Counsel for the respondents avers that the respondents have acted properly and no interference from the Tribunal was warranted.

7. Shri Kumar Parimal also relied upon the decision of the Hon'ble Supreme Court in N.K.Singh Vs. UOI & Ors. [(1994) 6 SCC 98] as well as Arvind Dattatraya Dhande Vs. State of Maharashtra and Ors. [(1997) 6 SCC 169] in support of his proposition that the transfers made not in public interest and malafide are liable to be quashed and set aside.

8. I have carefully considered the matter. ~~Shorn~~ of details, the applicant is aggrieved by his transfer. Hon'ble Supreme Court in the case of Union of India Vs S.L.Abbas [1993 (2) SLR 585] and Gujrat Electricity Board and Another Vs . Atma Ram Sungomal Poshani [AIR 1989 SC 1433] have advised the Courts and Tribunal to be wary of interfering with transfer orders issued by executive whose exclusive right of power of transfer is, unless they are specifically against the notified guide-lines and are malafide. The point emphasised in the two judgements referred to by the applicant

- N.K. Singh and A.D.Dhande (supra) is also the same. Therefore, I have to examine the above transfer in the above context.

9. The impugned order dated 10.01.2002 (at annexure A-1) reads as under:-

"Office Order"

Office order of even number dated 27th September, 2001 through which transfer of Dr. S.R.Korada (Shri Korada Srinivas Rao), Scientist 'C' from RDI Division to Adviser (KVS) was kept in abeyance is withdrawn with immediate effect. Consequently Shri Korada Srinivasa Rao, Scientist 'C' should report for duty to Adviser (KVS), DSIR through Shri R.R. Abhyankar, Scientists 'G' with immediate effect."

Perusal of the above makes it evident that the Deptt. had issued an earlier order on 27.9.2001, which has been referred to by the respondents at Annexure R-1. The order is as follows:-

"Office Order"

In pursuance of interim order of dated 21st September, 2001 in O.A.No.2478, filed by Dr. S.R.Korada Scientist 'C', the Central Administrative Tribunal, Principal Bench, New Delhi, Office Order of even number dated 28th August, 2001, in so far as it relates to transfer of Dr. S.R.Korada, Scientist-C from RDI Division to Adviser (KVS) is kept in abeyance with immediate effect. Consequently, he should report back to RDI Division with immediate effect, until further orders."

The said order has been issued in pursuance of the Tribunal's status quo order dated 21.9.2001 in OA 2478/2001,

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filed by the applicant, against his earlier transfer. Subsequently the OA No. 2478/2001, has been dismissed by me as having been withdrawn by the applicant. My order dated 7.12.2001 reads as below:-

"Shri Parimal, upon instructions from his client, prays for permission to withdraw the OA. Shri N.S.Mehta learned Sr. counsel states that interim orders have to be vacated. As the learned counsel for the applicant prays for permission to withdraw the OA, the same is granted. The OA is dismissed as withdrawn. Interim orders are vacated."

I note that no liberty has been granted while dismissing the OA as withdrawn, to file a fresh OA on the same issue or to revive it. Obviously the cause of action in OA 2478/2001 has abated and the respondents have given effect to their earlier order, held in abeyance by the order dated 27.9.2001. This order does not give effect to any fresh cause of action and the OA is therefore not maintainable.

8. In his pleadings the applicant has also referred to OA No.3391/2001, filed by him challenging the chargesheet issued to him. The same, however, has no relevance to the issue in this case and is ^{will be} ~~being~~ disposed of separately.

9. OA in the above circumstances, fails and is accordingly dismissed. No costs.

10. Before parting with this, I would like to record that neither the applicant nor the respondents has

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acted in a manner, which befitted their responsibility, position / status. Neither has covered itself in glory, while the applicant has been attempting to get the transfer order set aside, by any means, the respondents have apparently decided not to grant the said relief, ^{With equal stubbornness} It is in the interest of organisation and its fair name that they find a via media and come to an understanding with each other. I leave the matter at that.

(Govindan S. Tampli)
Member (A)

Patwal/