

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1119/97
T.A. No.

(8) 199

DATE OF DECISION 31.12.1997

<u>Dr. Vishwanath</u>	Petitioner
<u>Shri B.T. Kaul</u>	Advocate for the Petitioner(s)
Versus	
<u>UOI & Ors.</u>	Respondent
<u>Shri R.S. Aggarwal</u>	Advocate for the Respondent(s)

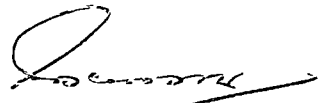
CORAM

The Hon'ble Mr. S.P. Biswas, Member(A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes. ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes.

JUDGEMENT


(S.P. Biswas)
Member(A)
31.12.97

Cases referred:

B. Vardha Rao V. State of Karnataka 1986(4) SCC 131
 Shilpa Bose V. Govt. of India AIR 1991 SC 532
 State of Punjab V. Joginder Singh Bhat AIR 1993 SC 2486
 UOI Vs. S.L. Abbas, AIR 1993 SC 2444
 UOI V. N.K. Samat AIR 1993 SC 1605
 N.P. Singh Vs. UOI JT 1994(5) SC 296
 Shantikumar V. Regional Dy. Director, Health Services AIR 1981 SC 1577
 Gujarat State Ele. Board Vs. Atmaram 1989 (10) ATC 396
 UOI Vs. H.N. Kirtania 1989 (11) ATC 269
 Shilpi Bose Vs. State of Bihar 1992 SCC (L&S) 127
 CGMT/Telecom NE Telecom Grid Vs. R.C. Bhattacharya (1995) SCC 532
 S.S. Kaurav Vs. UOI (1995) 3 SCC 270
 Kamlesh Trivedi Vs. Indian Council of Agr. Research (1988) 7 ATC 253
 Abani Kanta Ray Vs. State of Orissa 1996(32) ATC 10
 Express Newspapers Pvt Ltd. Vs. UOI (1986) 1 SCC 133
 Manager, Govt. Branch Press Vs. D.B. Belliappa (1979) 1 SCC 477
 S.N. Mukherjee Vs. UOI 1990(5) SLR 8
 Director, Rajya Krishi Uppadan Mandi Praishad/Lucknow & Ors.
 Vs. Nathi Lal 1995(2) UP LBEC 1128
 Bhupesh Kumar V. UOI 1997(2) ATJ 219
 A.D. Dande V. State of Maharashtra & Ors. JT 1997(6) SC 229
 Central Coop. Stores Ltd. V. Labour Court, H.P. 1993(3) SCC 214

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1119/1997

NEW DELHI, THIS 31ST DAY OF DECEMBER, 1997

HON'BLE SHRI S.P.BISWAS, MEMBER(A) 9

Dr. Vishwanath
B-3/137, MIG Flats
Sector IV, Rohini
Delhi-110 085

.. Applicant

(By Advocate Shri B.T. Kaul)

versus

Union of India, through

1. Secretary
Indian Council of Agricultural Research
Krishi Bhavan, New Delhi
2. Dr. R.S. Paroda
Director General, ICAR
Krishi Bhavan, New Delhi
3. Director
Indian Agricultural Research Institute
New Delhi
4. Dr. S.N. Puri
Director
National Centre for Integrated Pest Management
Pusa Campus, New Delhi
5. Project Director
Project Directorate on Vegetable Research
Varanasi-221005 .. Respondents

(By Advocate Shri R.S. Aggarwal)

ORDER

The applicant, a Principal Scientist (Entomology), challenges the office orders dated 26.7.96 and 30.4.97 issued by the respondents reviving the impugned order transferring the applicant from Indian Agricultural Research Institute (IARI for short), New Delhi to Project Directorate on Vegetable Research (PDVR for short), Varanasi/UP.

2. Heard the learned counsel for both the parties,
Shri B.T. Kaul, learned counsel for the applicant,
arguing strenuously, sought to challenge the transfer
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order on the basis that: (i) cases of such transfers should have been decided by a "Transfer Committee" in terms of detailed guidelines issued by the respondents vide A-5; (ii) that no transfer can be ordered in the middle of academic session as per law laid down by the Hon'ble Supreme Court as well as the norms laid down by the respondents themselves; (iii) that the order is the resultant effect of the applicant having made serious complaints to the higher authorities regarding gross irregularities in management of funds by R-2 and R-4 in collusion; (iv) that the order is being used as one of the mechanisms to ensure withdrawal of specific complaints made against the above two respondents; (v) that no public interest would be served in transferring the applicant to Varanasi as he has neither knowledge nor experience of doing research in vegetable pest management; (vi) the transfer is from a place where sanctioned post of Principal Scientists in Entomology discipline do exist and not disputed by respondents; and (vii) that pending complaints against Respondents No.2 and 4, the applicant has been subjected to wrath of respondent No.2 at the behest of Respondent No.4.

3. Drawing support from the decision of the Hon'ble Supreme Court in the case of B. Vardha Rao Vs. State of Karnataka, 1986(4) SCC 131, the learned counsel argued that the transfer order has been issued with malafide intention, not in public interest but made with oblique motives to harass the applicant and the said order is in contravention of the very guidelines framed by Respondent No.1 which have a statutory force and character.

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4. The main plank of applicant's attack is that the transfer order is actuated by malafides on the part of R-2 and R-4. Applicant, while working as Head of the Regional Research Centre, CAZRI, Pali (Rajasthan) in 1988-92, had unearthed a serious land scandal wherein questionable involvement of several senior officials were established including Dr. B.L. Jain. The direct nexus between Dr. Jain and R-2 had developed and at the behest of Dr. Jain and R-4, the said transfer order has been issued. When R-2 was Dy. Director General (Crop Science), he was also holding additional charge as Officer-on-Special Duty (OSD for short) of National Centre for Integrated Pest Management/ (NCIPM for short) Faridabad during 1988-90 and in this period there had been several instances of corrupt practices noticed and reported by the applicant. These irregularities related to basically misuse of public funds and misuse of power. These were perpetuated by various authorities from time to time including by R-4 on assumption of the post of Director of the said Institute at Faridabad. Applicant had filed detailed written complaint highlighting these irregularities on 5.4.95 to the Chief Vigilance Officer under R-1 stating specific cases of misdeeds by R-4 etc. Again on 9.5.96, the applicant wrote to higher authorities in minute details regarding misuse of power, public funds and other irregularities perpetuated by R-4 with documentary proof. R-2 got apprehended that the applicant may also now seek specific investigations into the sordid affairs of that period when he was OSD at NCIPM, Faridabad, now shifted to Delhi. Irregularities occurring during 1989-90 were attributable to R-2. Thus,

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R-2, at the behest of R-4 (erstwhile Director of NCIFM, Faridabad) initiated the suo moto note dated 19.2.96, the counsel contended.

5. In the counter, Shri R.S. Aggarwal, learned counsel for the respondents, submitted that the transfer order has been passed in normal course of administrative functions and in public interest. The allegation that R-2 is trying to shield Dr. Jain and others has been strongly denied. So is the denial in respect of harassment being caused to the applicant by the respondents. The learned counsel submitted that keeping in view the tussle between R-4 and the applicant, it was decided to transfer the applicant in the interest of the Institute and the immediate solution was to post him at IARI, New Delhi. However, it was found out that in IARI, scientists in position were in excess of the required strength. Therefore, it was decided to post the applicant at PDVR, Varanasi where the post of Principal Scientist in the discipline of Agriculture Entomology was available and it was felt that the services of the applicant could be properly utilised there. The order in the case of the applicant was passed by the competent authority and the applicant cannot raise the same issue having earlier filed OA No.1705/96 which was disposed of by the Tribunal by order dated 28.9.96. The allegation that the transfer order is illegal, arbitrary and an act of abuse of power has been strongly denied. However, the statement that major penalty proceedings have been initiated against

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Dr. B.L.Jain. Dr. H. Das and Shri S.N. Jha arising out of land scandal of Pali exposed by the applicant has been admitted by the respondents.

6. Relying on the decisions of the Hon ble Supreme Court in the cases of Shilpa Bose Vs. Govt. of India, AIR 1991 SC 532, State of Punjab Vs. Joginder Singh Bhat, AIR 1993 SC 2486, UOI Vs. S.L. Abbas, AIR 1993 SC 2444, UOI Vs. N.K. Samat, AIR 1993 SC 1605 and N.K. Singh Vs. UOI JT 1994(5) SC 296, respondents have contended that transfer orders issued by the competent authority in public interest do not violate any of the legal rights of the applicant. It is entirely for the employer to decide when, where and at what point of time a public servant is required to be transferred from his present place of posting,. Ordinarily, courts have no jurisdiction to interfere with the valid orders of transfer.

7. We shall examine in details the position of law on the subject.

The scope of judicial review in matters of transfer is now well settled and is very limited. In a catena of judgements, the Apex Court has, in no uncertain terms, cautioned against interference of transfer orders issued in public interest. In Shantikumari Vs. Regional Dy. Director, Health Services AIR 1981 SC 1577, the Supreme Court observed that in the case of transfer of a Government servant made in the exigency of service and for administrative reasons, the court should not normally interfere. Even if a transfer order is alleged to have been issued in contravention of the Government

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instructions/guidelines. the official concerned has to put up representation to the appropriate authority. In the case of Gujarat State Electricity Board Vs. Atmaram 1989 (10)ATC 396, the Apex Court held that transfer of an employee is an incident of service and the employee has no right to get posted to a particular place and transfer cannot be avoided merely on grounds of pendency of representation or personal difficulty. In case of UOI Vs. H.N. Kirtania 1989(11) ATC 269, the apex court ruled that it is not open to the court to interfere in transfer of an employee unless the same is vitiated by malafide, or actuated by colourable exercise of powers or in violation of statutory rules. In Shilpi Bose Vs. State of Bihar 1992 SCC(L&S) 127, the Supreme Court had gone into the question in greater details and observed, inter alia, that even if transfer orders are issued in violation of executive instructions or guidelines, the court ordinarily should not interfere with the said order. Para 4 of the judgement refers in this connection. The affected parties should approach the higher authorities in the department for necessary relief. The Hon'ble Supreme Court has laid down that a Government servant, holding a transferable post, has no choice in the matter of posting and that even hardship pleaded by applicant is not a matter which can enter legitimate consideration (see CGMT/Telecom, North-East Telecom Grid V. R.C.Bhattacharya (1995) 2 SCC 532 and State of MP Vs. S.S.Kaurva (1995) SCC(L&S) 666).

8. Very recently in the case of Abani Kanta Ray Vs. State of Orissa 1996 (32) ATC 18, the Supreme Court has held that "it is settled law that a transfer which is an incident of service is not to be interfered with by the

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courts unless it is shown to be clearly arbitrary or vitiated by malafide or infraction of any professed norm or principles governing a transfer".

9. The full Bench of this Tribunal in its decision in **Kamlesh Trivedi Vs. Indian Council of Agricultural Research (1988) 7 ATC 253: CAT(FBJ) 180** decided on 27.4.88 also held that transfer orders must "(1) be in public interest and in the exigency of service on administrative grounds, (2) It must not be in colourable or malafide exercise of power, (3) It should not be arbitrary, (4) It must be made by a competent authority in accordance with the rules and the instructions, if any, governing the transfer policy. But how far a transfer policy is mandatory, we express no opinion in this case. That must depend on the wording intendment of the instructions embodying the transfer policy, (5) The transfer itself must be ordered by a competent authority in bona fide exercise of power, (6) It should not be a fixed transfer for settling scores, (7) However, merely because transfer is ordered on complaints or after an enquiry into the guilt of the employee, it cannot be said to be by way of punishment, (8) The principle that justice should not only be done but appear to be done is not contravened if transfer is made without any further enquiry after a penalty is imposed in a proper disciplinary proceeding, (9) It does not amount to double jeopardy."

10. In **P. Damodaran (Dr.) Vs. State of Kerala (1982) 1 SLR 563**, the Kerala High Court had laid down that a person acts mala fide if he exercises the power

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perversely, unauthorisedly or improperly or unreasonably. In *Sheshrao Nagorao Umap Vs. State of Maharashtra* (1985) 2 LLJ 73, the Bombay High Court had held that the power to transfer must be exercised honestly, bona fide and reasonably and that if such power is exercised for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power.

11. We shall now proceed to consider whether the applicant's case can be brought within the above parameters which could call for this Tribunal's interference in the matter. From amongst the catalogue of allegations levelled against the respondents, a few of them would not hold good in the eyes of law. Applicant's plea that he has been prejudiced because of guidelines having not been followed cannot be accepted because such guidelines do not vest a Government servant with an enforceable right against the order of transfer. This view finds support in the law laid down by the Apex Court in *S.L. Abbas's case* (supra). Applicant's claim that one of the charged officers namely Dr. Jain has been unduly favoured by R-2 will also not render any help since R-2 considered the appeal of Dr. Jain as Head of the Organisation and by considering Dr. Jain's request for posting to a new place, R-2 has rightly shown the same unbiased consideration as has been done to the applicant while transferring him from Faridabad to New Delhi. The plea that such transfer has to be invariably processed through "Transfer Committee" is untenable because the competent authority, for reasons to be recorded in writing, can take such step to transfer an

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official without following the norms provided administrative exigency exists. Law permits such actions. Again, applicant's allegation that the respondents have shown undue haste in dealing with the Council's advice dated 30.4.97 is unacceptable. If the officials have taken action on the advice on the date of its receipt, they have acted with promptitude in terms of procedure laid down. Nor is the applicant's plea that there are 12 juniors who should have been considered is tenable as postings/transfers are not be guided by principles of seniority/juniority.

12. It is also true that pendency of proceedings or receipt of the complaint may itself be a valid reason for transfer. Neither it is necessary that enquiry must be held into the complaint before the transfer is ordered nor such an order be deemed as penal in nature when issued on receipt of the complaint. What remains to be seen if those specific allegations against R-2 and R-4, as in para 4 above, are the "operative reasons" for transfer.

13. The order at A-1 is an innocuous one. Elements of malafide or colourable exercise of power is not ostensible in it. But when the Tribunal is alerted, it has necessarily to tear the veil of deceptive innocuousness and see what actually motivated the transfer. Malafide has only to be presumed from established facts. In *M. Sankaranayanan v. State of*

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Karnataka the Supreme Court observed:

"It may not always be possible to demonstrate in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuations, surmises and conjectures"

The respondents have, therefore, to satisfy the court that the transfer was for some administrative exigency. Merely repeating the phrase "public interest" in the reply would not suffice when a specific charge of mala fides is made on certain facts which are borne from records and are not seriously disputed by both the respondents.

14. It is admitted by respondents that it is because of applicant's initiative that major penalty actions against 3 senior officials of CAZRI/Jodhpur in connection with a conspiracy at Pali Research Station to grab a few acres of Institute's land were taken and that the applicant is a witness from the prosecution side. It is also not in dispute that the applicant has made specific complaints to the appropriate authority against R-2 (para 4(n) of the OA) and Respondent No.4 (pages 13-32 of the rejoinder of the applicant dated 16.7.97). One such written allegation was well before the alleged suo-moto note of DG/ICAR dated 19.2.96. In this respect, it is apposite to recall decisions of the Hon'ble Supreme Court in *Manager, Govt. Branch Press Vs. D.B. Belliappa* (1979) 1 SCC 477. It was held:

"Where a charge of unfair discrimination is levelled with specificity or motives are imputed to the authority making the impugned order of termination of service, it is the duty

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of the authority to dispel that charge by disclosing to the court the reason or motive which impelled it to make the impugned action"

15. In N.K. Singh's case (supra) there was specific allegation against the Hon'ble Prime Minister that he had approved transfer orders as he was annoyed with the applicant on account of certain investigations made by him on a complaint of phone tapping and also the investigation made by the applicant against a so-called Godman. The then Prime Minister was impleaded as party respondent by name in that case and the specific allegation of malafide as also alleged ulterior motive in the transfer was strongly refuted.

16. We shall now examine the issues concerning applicant's request for transfer and the respondents' plea of "Public interest". Learned counsel for respondents admits that applicant's request for transfer was only in relation to his desire to come out of NCIRM, Faridabad after regular Director joined there. This has also been so recorded on 10.3.96 in the relevant office file at page 33/n. It was also admitted by the respondents' counsel that there was no other request from the applicant concerning his transfer out of any of the Institutes at Delhi. The recorded note of the Director(P) dated 17.7.96 stating "Secretary may like to consider the request for transfer of Dr. Vishwanath from IARM to some other Institute" is not supported by records.

17. For two reasons the respondents' plea of "public interest" falls on the ground. Firstly, the transfer of the applicant to Varanasi has been sought to be

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justified on the basis that there is a post of Principal Scientist lying vacant and Dr. Vishwanath is an experienced scientist, his services will be immensely useful for continued research work at the Project Directorate of Vegetable Crop at Varanasi. We do not know the date on which the new Project Directorate of Vegetable Crop at Varanasi was established resulting in the requirement of a Principal Scientist. However, the need for filling up of the post at Varanasi did not arise out of suo moto requirement of the department to fill up the post. A perusal of records (page 40 of the concerned file) would reveal that the so called plea of "public interest/administrative exigency" would not have surfaced at least at that time but for the communication dated 28.5.96 of the Director, IARI protesting vehemently against applicant's transfer to IARI. In fact, the proposal was initiated by the competent authority not arising out of the urgent need to fill up the vacancy but out of necessity for carrying out a review of the order demanded the Director, IARI vide his aforementioned letter. Secondly, communication dated 28.6.97 of AAO/PDVR, Varanasi knocks down the very foundation on which the plea of "Administrative exigency" is built up. It says "Dr. Vishwanath has never worked in the discipline of vegetable entomology which is the requirement of this Institute. In view of this he may be transferred to any other place where his services may be utilised in a better way". It eludes comprehension as to how the cause of "public service" could be served by an official at a place where the very presence of such a "transferee" has been questioned.

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18. Besides above, the counter of R-2 suffers from two more infirmities. Firstly, the submission in para 2 that the applicant has been provided with proper officer accommodation does not reveal the whole truth. It contradicts A-9 letter issued by Shri O.P. Pal on 14.11.96. The office accommodation was given only on 11.11.96 whereas from 14.10.96, the applicant operated from the Library of IARI. Secondly, there is a lack of consistency in respondents' approach in respect of applicant's hardship on account of children education. The reason for which he was allowed transfer to IARI also continued with the applicant when the impugned order was issued in August, 1996. The transfer order was issued in August, 1996 and the applicant has also come out with difficulties in respect of his school going children, one of them studying in Class XII and the academic session in Delhi ends in April/May. It has been laid down by Hon'ble Supreme Court in the case of Director of School Education, Madras V. O. Karuppa Thevan 1994 SCC (L&S) 1180 that the transfers should not be normally effected during the mid-academic session. Although, there is no such rule that an official cannot be transferred during the school session, their Lordships in the above case were of the view that "in effecting transfer, the fact that the children of an employee are studying should be given due weight if the exigencies of the service are not urgent". In the instant case the respondents have not explained any urgency for which they could not wait till May, 1997.

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The order dated 22.7.96 on the file does neither mention anything about schooling problem though the applicant had taken a special plea on this. Nor does the note in the file specify the special circumstances for which norms for transfer/guidelines could not be adhered to. In fact, for the reasons mentioned here in above in paras 16 and 17, the notes at pages 39-40 of the file No.77(2)/93-Part III of the ICAR would appear to be a tailor-made one to suit a pre-conceived design of the answering respondents.

19. At this stage, it will be pertinent to mention and examine the applicant's allegation of being harassed. The table below brings out the frequency of transfer and how the applicant has apparently suffered on account of non-payment/delayed payment of his salary.

FROM FEBRUARY 1993 TO JULY, 1997

Date of transfer	Place where transferred	Duration of stay	Remarks
By order issued at Jodhpur	CAZRI/PALI Rajasthan	17.2.88 to 16.2.93	--
10.8.93	DWR/Karnal	12.8.93 to 16.2.93	Director did not want him as the discipline of Entomology was not operative causing problem of regularisation of the period from 12.8.93
6.9.93	NCIPM/Fari-dabad	15.2.94 to 18.1.95	Director did not want him as there was no suitable post to adjust the applicant. displeasure communi-

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cated to adjust him
against the post of
statistics

1.1.95 NCIPM/Delhi 19.1.95 to
30.4.96

NIL

1.5.96 IARI/Delhi 10.5.96 to
26.7.96

Director, IARI does
not want him because
of 29 excess scien-
tists available there
Applicant was asked
to operate from NCIPM
Delhi

26.7.96 PDVR/Varanasi

PDVR doesnot want him since the
applicant has never worked in
the discipline of vegetable ente-
mology

The above table shows that there was no taker for applicant's services and yet unmerited orders of postings continued to be issued by the respondents causing the aforesaid transfers, sanction of extraordinary leave as well as non-payment/delayed payment of salary to the applicant herein causing financial hardships.

20. We find that the Hon'ble Minister had issued order on 10.8.96 allowing the applicant to stay at IARI atleast till April, 1997. This order was communicated after two months on 14.10.96. Respondents took 8 weeks time only to verify if the relieving order dated 30.7.96 had actually been served to the applicant or not. It was only after ascertaining that the order was not physically served upon the applicant that the respondents decided to implement the orders staying the transfer. If this was issued in time, there would have been no necessity for the applicant to approach this Tribunal by filing a separate OA (1705/15) on 12.8.96. Respondents thus have acted in a most laccadiscal manner

in follow up of the Minister's order knowing very well that the order of transfer, even if it is implemented, could be as well cancelled or modified by the competent authority. If any authority is required for this proposition, it is available in Director, Rajya Krishi Utpadan Mandi Parishad/Lucknow and Ors. V. Nathi Lal, 1995(2) UP LBEC 1128: Bhupesh Kumar Vs. UOI, 1997(2) ATJ 219.

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21. Respondents in the present case have failed to controvert the allegations with reasons. The counter by R-2 lacks details of administrative exigencies that prompted the transfer order. In a contested case like this, some elaboration as regards "public interest" was needed. Mere use of the word "public interest" without valid reasons, much less convincing ones, does not satisfy the requirements of law. The law as has been laid down in such matters is available in an order of Constitution Bench of 5 judges of the apex court in the case of S.N. Mukherjee Vs. UOI, 1990(5) SLR 8. Their Lordships held:

"Except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision"

22. It is evident from the aforesaid details that while R-2 has not adequately rebutted the pleas taken by the applicant, and surprisingly R-4 is totally silent on the specific allegations against him. And it is well settled in law that charges, if not controverted, amounts to acceptance. Such a view has been taken by

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the apex court in the case of Express Newspapers Pvt. Ltd. vs. UOI (1985)1 SCC 133. In para 116 of the judgement, it has been held that:

"where mala fides are alleged, it is necessary that the person against whom such allegations are made should come forward with an answer refuting or denying such allegations. For otherwise such allegations remain unrebutted and the court would in such a case be constrained to accept the allegations so remaining unrebutted and unanswered on the test of probability"

23. In the instant case, respondents admittedly have no case that the applicant is inefficient, disobedient, dishonest or incapable of discharging his responsibilities. On the contrary, as per records, applicant's long experience was one of the worthy considerations for his transfer to Varanasi. But the series of events preceding to the transfer order does not augur well in terms of unbiased handling of administrative affairs or even "fair treatment" to the official. Events that would stand testimony to the reality of facts are mentioned hereunder.

1) Applicant's relationship with the respondents started getting unhappy turns only after PALI land scandal in general and in particular after the applicant's written communications in April, 1995 and May, 1996 to the Chief Vigilance Officer touching upon the specific examples of irregularities.

2) Respondents failure in not entering into a final and logical conclusion after recording the suo moto note dated 19.2.96 cannot be ignored. It

would appear that respondents (R-2 in particular) wanted to keep the issue open despite remarks of the Director, (Vigilance) dated 6.3.96 saying "there is no complaint pending against Dr. Vishwanath, Principal Scientist, NCIPM". Having thus raised the subject, respondent No.2 should have recorded his final views of the same particularly when materials were placed before him on the file. 26

3) With the nature of Hon'ble Minister's order dated 10.8.96, a duty was cast upon the respondents to resubmit the file to the Minister or to take a decision at the appropriate level that the Minister need not be bothered on the issue again. Nothing was done.

4) Guidelines issued on transfer are not binding. In the absence of statutory provisions/rules governing transfer of such scientists, guidelines would have the force of law. But with reasons recorded in writing specifying the circumstances (administrative exigencies) respondents are within their powers to by-pass placing of "transfer matters" before the Committee. In none of the five transfer orders (as in the Table of para 19) issued to the applicant since 1993, respondents thought it necessary to explain why laid down procedures on transfer could not be adhered to. 6

5) By A-4 order dated 25.7.96, applicant gets posted to IARI/Delhi and only by another order dated 26.7.96, he gets posted at Varanasi.

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6) Respondents claim that there has been no harassment to the applicant but by A-3 letter dated 14.6.96, IARI writes to NCITM, Faridabad to charge applicant's past salary to obviate physical hardships. There are examples/evidence on record to show that the applicant was without posting from October, 1992 to August, 1993 with consequences of delayed regularisation of the period as well as payment of salary.

24. The abovementioned detailed reasons, events, antecedent facts and circumstances of the present case establish beyond doubt that there was "unfairness" and "malice". Behind the mask of innocence there was a sweet anger and a hidden desire to keep the applicant -- a source of irritation for some -- at a distance away from the headquarters. In a comparable situation like the present one, the Hon'ble Supreme Court in the case of Shri A.D. Dande Vs. State of Maharashtra & Ors., JT 1997(6) SC 229 quashed the transfer order of the appellant state government official on the ground that the order was nothing but malafide and arbitrary at the behest of persons interested to victimise the honest officers. Exactly the same situation prevails here. Seen in the light of aforesaid detailed discussions, the impugned order is in violation of the law laid down in

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Abani Kanta Ray's case (supra-para 8) as well as the norms at Sl.Nos.(2), (3) and (6) of the Full Bench Judgement (supra-para 9).

25. In the result, the OA succeeds on merits and is accordingly allowed with the following orders:

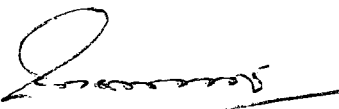
- (1) Orders dated 25.7.96 and 30.4.97 transferring the applicant to Varanasi and relieving him from IARI/ Delhi respectively shall stand quashed;
- (2) Applicant shall be taken back in his present capacity in any one of the Institutes in Delhi. Appropriate order to this effect shall be issued within four weeks from the date of receipt of a certified copy of this order. Respondents shall have the liberty to consider, if necessary, transferring sanction of equivalent post from one Unit to another or to take any other suitable step/steps to obviate the problem of excess hands working in some of the units under their control.
- (3) Respondents will also be free to transfer the applicant in future but only according to the guidelines and rules laid down on the subject.

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(4) This is eminently a fit case for initiating action against authorities/officers who have handled the transfer issue herein in the light of the law laid down in Central Coop. Stores Ltd. Vs. Labour Court, Himachal Pradesh at Shimla and Ors. 1993(3) SCC 214, wherein unreasonable and defiant attitude has been deprecated. I find the same situation prevails here. This Tribunal would leave it to R-1 to take appropriate disciplinary actions against the erring officers who have processed this case and ignored the departmental norms repeatedly and that too without any explanation. This shall be done within a period of three months and a compliance report be sent to the Tribunal within the same period under Section 24 of the CAT(Procedure) Rules, 1987.

(5) There shall be no order as to costs.


(S.P. Biswas)
Member (A)

/gtv/