

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.NO.1326/94

Decided on 18.01.1995

Dr. Suresh Chandra Saxena
S/o Late Shri R.C.Lal
R/o Bishnupur, Shillong
(MEGHALAYA) APPLICANT
(through Mrs. Meera Chhibber counsel for the applicant)

Vs.

Union of India

1. Director(Vigilance)
Indian Council of Agricultural Research
(I.C.A.R.), Krishi Bhavan,
NEW DELHI - 110 001.

2. Secretary

Indian Council of Agricultural Research
Krishi Bhavan,
NEW DELHI - 110 001.

3. Director General

Indian Council of Agricultural Research
Krishi Bhavan
NEW DELHI - 110 001. RESPONDENTS

(through Shri V.K.Rao, counsel for the respondents)

O R D E R

Hon'ble Shri P.T.Thiruvengadom, Member(A)

The applicant is working as a Scientist S-3, Indian Council of Agricultural Research, Research Complex, Shillong. On 27.9.1989, he was placed under suspension. This suspension order was revoked on 31.5.1994. On the revocation of suspension, the applicant was transferred from Shillong to C.I.R.G., Makhdoom, District Mathura, U.P. This O.A. has been filed challenging the transfer.

Contd.....2/-

1. The learned counsel for the applicant assails the transfer on the following grounds:-

i) The applicant had been suspended at the time when a number of C.B.I. cases were registered against him. It is argued that the cases were registered based on malicious and false complaints by interested parties, since the applicant had chosen to bring to light irregularities committed by the previous incumbent. In any case, out of the three issues handled by C.B.I., the one relating to alleged misappropriation of Rs.80,000 from imprest was dropped by the C.B.I. and later by the Department. The second case related to alleged misappropriation of Rs.75,000 from the sale proceeds of farm products. The special judge discharged the applicant on 18.4.1989 as there was insufficient evidence to proceed with the case. However, there was a follow up disciplinary proceeding by the Department, for major penalty. Though a number of years have passed, even an enquiry officer has not been appointed. The third case related to alleged bribery to the tune of Rs.3,000/- The High Court of Gauhati stayed all the proceedings in the criminal case. Though, the stay was given on 13.1.1992, the respondents have not filed any counter.

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In the above background where there has been inaction on the part of the respondents for a number of years transfer of the applicant on the assumption that he would be interfering with the progress of various cases is unwarranted.

- ii) The applicant is working at Shillong and it is the Government policy to try and place Husband and Wife as far as possible, ^{at} the same place.
- iii) The applicant has specialised in Poultry and in the new unit this specialisation will go waste.
- iv) It is admitted that the applicant is suffering from heart-ailment and by transferring him out of Shillong, he will be compelled to make a number of trips to pursue the criminal case and departmental case.

2. It is argued that the transfer is a malafied one. Malice in law is proved by the fact that the applicant was suspended illegally. Also, no action has been taken to enquire into the complaints made by the applicant against the previous incumbent of the post, even though, such complaints were serious in nature.

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3. The learned counsel for the respondents argued that tribunals and courts can interfere in transfers only when it can be established that such transfers are malafide or there has been infraction of statutory provisions. This is the established position in law. No malafides have been alleged and no particular individual has been impleaded as a respondent against whom an accusation ^{of} _^ malafide has been made. The argument that the suspension was an act of malice is not sustainable since the suspension was after the registration of three cases by C.B.I.

In one of these the charges have been proved. In the second case the [^] Departmental proceedings are continuing. The charge in the third case is a serious one where the applicant is alleged to have given a bribe to a C.B.I. Inspector. It is the case of the respondents that a person who tries ^{to} influence a C.B.I. Inspector cannot be retained at the same place where criminal and departmental proceedings are going on in two different matters. The applicant had been working in Shillong from 1983. The applicant has not been able to show violation of any statutory provision with regard to transfer.

4. As regard keeping the husband and wife at the same place relevant instructions are only recommendatory in nature.

5. As regards the contention of the applicant that he had brought certain irregularities to the notice of the Director, I.C.A.R., the respondents

contd.....5/-

argued that the same are misconceived and untenable and moreover vague.

6. Having heard both the counsels I note that no malafides have been established. The transfer order has been issued by the Director General, I.C.A.R. and there is no charge of bias against him. There is also no infraction of any regulations regarding transfer. The transfer order indicates that it has been done in public interest. From the reply I note that there are charges of attempting to bribe a Government official and also charges of misappropriation. No doubt, these are yet to be finally established. The respondents have apprehension about the proceedings being conducted in a fair and impartial manner if the applicant were to continue in the same place. Hence (may have chosen to transfer him from the place he had worked already for more than eleven years. In these circumstances I don't find this a fit case for interference.

7. At this stage, learned counsel for the applicant referred to orders passed on 19.11.1986 by the Jabalpur Bench of this Tribunal in O.A.65/86 (ATR 1987(1) CAT-169). That was a case where on revocation of suspension, the employee was posted to another place. There was no transfer of the applicant therein. Hence the tribunal held that there could not be a *vacuum* and *interregnum* when the applicant had to suddenly join at another place, by a posting order for the new place without transfer

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from the old place. In the impugned order in this OA it has been clearly brought out that the applicant was being posted from Shillong to Makhdoom and that the ~~transfer~~ transfer is in public interest. Hence, the citation related does not help the case of the applicant.

6. In the circumstances, the OA is dismissed.

There is no order as to costs.

P. J. Thiru
1/2/95

(P.T.Thiruvengadam)
Member (A)

After the above order was read out, the learned counsel for the applicant prayed that this order should not preclude the respondents from sympathetically considering the representation dated 22.6.94 of the applicant and the respondents may be directed to dispose of the representation expeditiously. Accordingly, I direct the respondents to dispose of the pending representation within one month from the date of receipt of this order in a manner they deem fit. Such disposal will not however give rise to a fresh cause of action.

P. J. Thiru

(P.T.Thiruvengadam)
Member (A)
1.2.1995