

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00305/2020

ORDER RESERVED ON 16.07.2020

DATE OF ORDER: 24.09.2020

CORAM:

HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)

(On video conference from Central Administrative Tribunal, Bangalore Bench, Bangalore)

HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)

(On video conference from Central Administrative Tribunal, Bangalore Bench, Bangalore)

Shri S.R.Natesh, I.F.S.

Commissioner

Department of Animal Husbandry & Veterinary Services

Government of Karnataka

S/o K.Rajappa

Aged about 46 years

Residing at #62/19, G-1

Balaji Residency

2nd Main, Prashanth Nagar

Bengaluru-560 079.

....Applicant

(By Mrs. Lakshmi Iyengar, Sr. Advocate assisted by Advocate Shri Siddharth D.K. - through video conference)

Vs.

1. Union of India

Department of Personnel and Training

Represented by its Principal Secretary

New Delhi-110 001.

2. State of Karnataka

represented by its

Chief Secretary

Vidhan Soudha

Bengaluru-560 001.

3. Department of Personnel
and Administrative Reforms
Represented by its Secretary
Vidhan Soudha, Bengaluru-560 001.

4. Shri.H.Basavarajendra, I.A.S.
Chief Executive Officer & Executive Member
Karnataka Industrial Areas
Development Board (KIADB)
Khanija Bhavan, Race Course Road
Bengaluru-560 001.Respondents

(By Advocate Shri Sayed Kazi for Respondent No.1,
Shri R. Subramanya, Additional Advocate General, Karnataka along with
Shri T.S. Mahanthesh, Additional Government Advocate for Respondents
No. 2 and 3 – through video conference. None for Respondent No. 4)

ORDER

PER: SURESH KUMAR MONGA, MEMBER (J)

Factual matrix emanating from record of the case is that the applicant is an Indian Forest Service officer of 2003 batch, Jharkhand Cadre. He is on deputation to State of Karnataka since 03.01.2017 and presently he is working as Commissioner, Department of Animal Husbandry and Veterinary Services, Government of Karnataka. It has been averred by the applicant that prior to his posting as Commissioner, Department of Animal Husbandry and Veterinary Services, he was holding the post of Conservator of Forests, Hassan Circle with an additional charge of Kodagu Circle, Madikeri. He joined the Department of Animal Husbandry and Veterinary Services on 23.10.2019 pursuant to a Government Notification No. DPAR 36 SFP 2019 dated 23.10.2019.

2. It has further been averred that the applicant has accomplished many projects for the development of animal health in a short span of 8 months

including completion of Pashupalana Bhavan building works, effective management of the COVID Pandemic situation in the department, transfer of the direct benefit of the milk incentive to the farmer's account, formulation and implantation of cattle camp policy, more than 96% achievement with respect to the financial utilization of funds despite having taken charge in the middle of the financial year and free milk distribution to the destitutes, stranded labourers during the COVID Lockdown.

3. The respondent No.3 has now issued a notification No. E-DPAR 272 SAS 2020 dated 18.06.2020 whereby the applicant has been transferred as Conservator of Forests & Director, Project Elephant, Bengaluru with immediate effect. In view of the said notification, there are as many as 8 IAS officers and 1 IFS officer who have been transferred. It has been stated that Dr. N.Shivashankara, IAS has been given concurrent charge of two posts. Though he was transferred as Chief Executive Officer and Executive Member, Karnataka Industrial Areas Development Board (hereinafter called as 'KIADB'), he continues to hold additional charge as Director of Department of Mines & Geology. It has further been stated that instead of posting respondent No.4 as Director of Department of Mines & Geology, Dr. N.Shivashankara has been given the concurrent charge of two posts. An inter-se transfer at best could have been done so as to ensure that respondent No.4 Sri H. Basavarajendra took charge of post from Dr.N.Shivashankara. The focus of giving two key top posts to one person exclusively reeks of malafides as both the departments i.e. Mines & Geology and KIADB are the most sought-after postings. The deliberate attempt to

accommodate a preferred person has had a cascading effect on the applicant's transfer.

4. The applicant being an officer of IFS cadre who is also holding a Degree of M.Sc. (Forestry), which is an allied discipline to veterinary services, is the most suited person to the present position as opposed to an officer from the IAS cadre.

5. It has still further been averred that the post to which the applicant is now being transferred, could have been held by him as a concurrent charge without him being transferred to that post.

6. The post of Conservator of Forests and Director, Project Elephant, Bengaluru, by itself is a post that can be handled as a concurrent charge. Ideally, the applicant should have been allowed to hold his post as the Commissioner, Department of Animal Husbandry and Veterinary Services, Bengaluru with an additional charge to the post of Conservator of Forests and Director, Project Elephant, Bengaluru. According to the applicant, the order of his transfer dated 18.06.2020 amounts to belittling him, his work and his dignity as well. It virtually amounts to demotion and not a transfer.

7. Aggrieved by the order of his said transfer, the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

8. Respondent No.2 & 3 by way of filing a joint reply have joined the defence and opposed the Original Application stating therein that the applicant is an Indian Forest Service officer and he has been transferred to

the post of Conservator of Forests & Director, Project Elephant, Bengaluru, a post which is meant for an IFS officer. It has been stated that Shri H.Basavarajendra is an IAS officer and he has been transferred to the post of Commissioner, Animal Husbandry & Veterinary Services, which is a post meant for an IAS officer. As per the Karnataka Animal Husbandry and Veterinary Services (Cadre and Recruitment) Rules, 2017 (hereinafter called as '2017 Rules'), the post of Commissioner, Animal Husbandry and Veterinary Services, Bengaluru is encadred for an IAS officer. It has further been stated that Rule 9 (1) of the Indian Administrative Service (Cadre) Rules, 1954 (hereinafter called as '1954 Rules'), a cadre post in a State cannot be filled by a person who is not a cadre officer except where no suitable cadre officer is available for filling the said vacancy. As such, the applicant herein, who is an IFS officer, has been transferred from the post of Commissioner, Animal Husbandry & Veterinary Services, Bengaluru and Shri H.Basavarajendra, IAS has been posted in the said post. The arrangement in the post of Commissioner, Animal Husbandry & Veterinary Services, Bengaluru was a temporary arrangement and since now an IAS officer has become available, the applicant who is an IFS officer has been transferred to a post meant for an IFS cadre officer.

9. The respondents have further stated that the post of Project Elephant, Bengaluru was that of Additional Principal Chief Conservator of Forests rank. The said post has been downgraded so as to accommodate the applicant herein. The post of Conservator of Forests & Director, Project Elephant, Bengaluru is of sufficient seniority and importance. The applicant

cannot claim his posting in a post reserved for another cadre as a matter of right.

10. The respondents have further stated that the transfer is an incident of service and an employee holding an appropriate post has no vested right for posting in a particular post. With all these assertions, the respondents have prayed for dismissal of the Original Application.

11. While filing rejoinder to reply, apart from reiterating the facts stated in the Original Application, the applicant has further submitted that '1954 Rules' do not apply in the instant case. As per the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955 (hereinafter called as '1955 Regulations') and the updated Civil List IAS 2019, the post of Commissioner, Department of Animal Husbandry and Veterinary Services is not encadred to the Indian Administrative Service and, therefore, Rule 9 of '1954 Rules' stipulating the replacement of a non-cadre officer with a cadre officer is not applicable.

12. Heard learned counsels for the parties.

13. While opening her arguments, Mrs. Lakshmi Iyengar, learned Senior Advocate representing the applicant submitted that the applicant's transfer vide order dated 18.06.2020 is contrary to the guidelines dated 07.06.2013 (Annexure A7) issued by the Government of Karnataka. Learned counsel submitted that the applicant's pre-mature transfer just within a period of 7 months without recording any reason for the same cannot be sustained in view of Clause-9 of the said guidelines. Learned counsel further submitted

that even the Chief Minister's prior approval was not taken before issuance of order dated 18.06.2020.

14. According to Mrs. Iyengar, the applicant could not have been transferred before completion of his tenure of two years in the post of Commissioner, Department of Animal Husbandry and Veterinary Services. In order to support her arguments, learned counsel placed reliance upon a judgment of the Hon'ble High Court of Karnataka in the matter of **Sri Rajashekhar M. Vs. State of Karnataka** [Writ Petition No.45916/2018 (S-KAT) decided on 13.11.2018] and a judgment of the Hon'ble Supreme Court in the matter of **N.K.Singh Vs. Union of India** AIR 1995 SC 423.

15. Mrs.Iyengar, learned counsel for the applicant still further submitted that the applicant has been transferred from the post of Commissioner, Department of Animal Husbandry and Veterinary Services just to accommodate one Sri H.Basavarajendra, IAS and not in administrative exigencies.

16. Per contra, Sri Subramanya, learned Additional Advocate General representing the State of Karnataka submitted that 2013 guidelines (Annexure-A7) do not apply to the applicant's case as those guidelines are dealing with the State Government servants only. He further submitted that there are no guidelines with the State Government to deal with the transfers and postings of IAS and IFS officers.

17. While drawing our attention towards Clause-3(c) of the said guidelines, learned Additional Advocate General submitted that these

guidelines are applicable to Group-A, B, C, D posts which are classified in Rule 5 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. Learned counsel still further submitted that even if it is construed that these guidelines are applicable to postings and transfers of IAS and IFS officers, then in view of Clause-13 of the said guidelines, the applicant ought to have submitted a representation asking for review of transfer order within a period of one week, which admittedly he has not done.

18. According to learned counsel, the present Original Application is wholly misconceived.

19. Considered the rival contentions of learned counsels for the parties and perused the record.

20. The applicant is an Indian Forest Service officer and by way of impugned order dated 18.06.2020 he has been transferred to the post of Conservator of Forests and Director, Project Elephant, Bengaluru which is a post meant for an IFS officer. Before being posted as Commissioner, Department of Animal Husbandry and Veterinary Services, Government of Karnataka, vide order dated 23.10.2019, he was holding the post of Conservator of Forests, Hassan Circle with an additional charge of Kodagu Circle, Madikeri. There is no dispute with regard to the fact that the post, on which now he has been transferred is meant for an Indian Forest Service officer only. The applicant has been relieved from the post of Commissioner, Animal Husbandry and Veterinary Services, Government of Karnataka by Shri H. Basavarajendra, who is an Indian Administrative Service officer. The

post of Commissioner, Animal Husbandry and Veterinary Services, Government of Karnataka is an encadred post for an officer of Indian Administrative Service in terms of '2017 Rules' promulgated by the State Government in exercise of its powers under Section 3 (1) read with Section 8 of the Karnataka State Civil Services Act, 1978.

21. As per the provisions of Rule 8 of the Indian Administrative Service (Cadre) Rules, 1954 a cadre post can only be filled by a cadre officer. However, an exception has been carved out in Rule 9 of the said Rules making out therein a provision that if no suitable cadre officer is available, a cadre post can be filled up by a non-cadre officer. A Further provision has been made that if it is proposed by the State Government to continue a non-cadre officer on a cadre post beyond a period of 3 months, the State Government shall obtain the prior approval of the Central Government for such continuance.

22. The applicant, admittedly, who belongs to Indian Forest Service was posted as Commissioner, Animal Husbandry and Veterinary Services, Government of Karnataka vide order dated 23.10.2019, a post which in any case is encadred for an Indian Administrative Service officer in terms of '2017 Rules'. He has now been transferred from the said post as services of a suitable officer namely Shri H. Basavarajendra from the cadre of Indian Administrative Service have become available. In our considered view, no fallacy can be found with the impugned order of applicant's transfer from the post of Commissioner, Animal Husbandry and Veterinary Services as the

State Government has found a suitable IAS officer to man the said post which is encadred for an officer of Indian Administrative Service.

23. Argument of learned counsel for the applicant that before issuance of the applicant's transfer order, no prior approval was taken from the Hon'ble Chief Minister and, therefore, the said order is in violation of 2013 instructions does not find favour with us. Reliance of the applicant's counsel upon 2013 instructions, in our opinion, is highly misplaced. A perusal of the said instructions reveal that those are applicable upon Group A, B, C and D posts under the Government. Clause 3 (c) of the said instructions defines 'Group A, B, C and D' posts as the posts under the Government, classified as Group A, B, C and D in Rule 5 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957. In any case, the post held by the applicant cannot be termed to be a post in any of the categories as defined in Rule 5 of the said Rules. Even if it is construed that those instructions are applicable upon the applicant's services, still we find that the order of his transfer was issued by the Hon'ble Chief Minister and, therefore, the argument of learned counsel for the applicant that no prior approval of the Hon'ble Chief Minister was sought is without any basis. The judgment of the Hon'ble High Court of Karnataka in **Shri Rajashekhar M** (supra) is also of no avail to the applicant. It was a case of premature transfer of a State Government's employee wherein he was alleging violation of 2013 instructions as no approval of the Hon'ble Chief Minister was taken before issuance of the said order. In the said case, learned Additional Advocate

General while representing the State of Karnataka had conceded that the prior approval of the Hon'ble Chief Minister was not preceded by recording of any reasons by the competent authority.

24. We also do not find any substance in the argument of learned counsel for the applicant that the applicant's posting in the post of Conservator of Forests and Director, Project Elephant, Bengaluru from the post of Commissioner, Animal Husbandry and Veterinary Services amounts to demotion as it will be belittling him, his work and his dignity as well. It has come up on record that the post of Project Elephant, Bengaluru was a post meant for Additional Principal Chief Conservator of Forests rank. The said post has been downgraded to accommodate the applicant herein. In this view of the matter, we find the aforesaid argument of learned counsel without any basis.

25. In order to condemn the impugned order dated 18.06.2020, the applicant has averred in his Original Application that Dr. N. Shivashankara, IAS has been given concurrent charge of two posts. Though he has been transferred as Chief Executive Officer and Executive Member, KIADB, still he continues to hold additional charge as Director of Mines and Geology. The applicant has further pleaded that instead of posting Shri H. Basavarajendra, IAS (Respondent No. 4) as Director of Mines and Geology, Dr. N. Shivashankara has been given the concurrent charge of two posts. The applicant has put in a suggestion that an inter se transfer at best could have been done so as to ensure that Respondent No. 4 - Shri H. Basavarajendra – takes the charge of post from Dr. N. Shivashankara.

According to applicant, he is the most suited person for the post of Commissioner, Animal Husbandry and Veterinary Services as opposed to an officer from the IAS cadre and ideally he should have been allowed to hold the post of Commissioner, Animal Husbandry and Veterinary Services with an additional charge to the post of Conservator of Forests and Director, Project Elephant, Bengaluru as he is also holding a degree of M.Sc. (Forestry).

26. It appears that the applicant while raising aforesaid pleas has remained totally oblivious about the fact that he is a public servant. In our considered opinion, a public servant cannot be allowed to harp upon the arena of the Government which is headed by a person considered to be the will of the public. He cannot be allowed to interfere and to put suggestions in the matters of postings and transfers which are ordered in the exigencies of service and for better management of administration.

27. While making self appraisal by referring to his educational qualification and capabilities to hold the charge of two posts simultaneously, the applicant cannot be allowed to claim a right over a post which is an encadred post for an Indian Administrative Service officer. One can undertake an exercise of self appraisal with regard to his work at the end of every day enabling him to improve his working next day, but in our considered view, he cannot be given such a leeway to submit an account of his performances to his employer to seek his posting at a particular place. While discharging his official duties as a government servant, if the applicant

has undertaken certain projects to serve the public in terms of governmental policies, that does not create a right in him to remain on a particular post.

28. With so much of vehemence, learned counsel for the applicant relied upon a judgment of the Hon'ble Supreme Court in **N.K. Singh (supra)** and stated that the transfer of the applicant from the post in question is prejudicial to public interest and the same could have been avoided as the successor of the applicant is not a suitable officer for the said post. We are unable to countenance the argument raised by learned counsel for the applicant as we find that the applicant has been relieved from the post of Commissioner, Animal Husbandry and Veterinary Services by an officer of Indian Administrative Service and there is nothing on record available to hold that he is not suitable for the post.

29. In **Shilpi Bose vs State of Bihar** AIR 1991 SC 432, the Hon'ble Supreme Court has held that the court should not interfere with a transfer order which is made in public interest and for administrative reasons unless the said order is made in violation of any mandatory statutory rule or on the ground of malafide.

30. In **Union of India And Ors vs S.L. Abbas** 1993 SCR (3) 427 it has been held by the Hon'ble Supreme Court that an order of transfer is an incident of service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. In the case in hand, nothing has come up on record

to hold that the impugned order of transfer suffers from the vice of malafide or it is contrary to any statutory provision.

31. To the same effect, in **State of U.P. vs Gobardhan Lal** 2004 (11) SCC 402, the Hon'ble Supreme Court has held that the transfer of an employee is not only an incident inherent in the terms of his appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law of governing or conditions of service. In view of the principles laid down by the Hon'ble Supreme Court in the said report, a government servant cannot be allowed to remain posted on a particular place or position as long as he desires.

32. In **State of Haryana vs. Kashmir Singh** (2010) 13 SCC 306, the Hon'ble Supreme Court has further ruled that the transfer ordinarily is an incidence of service and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal.

33. In any case, the applicant has failed to establish on record as to how his transfer from the post of Commissioner, Animal Husbandry and Veterinary Services to the post of Conservator of Forests and Director, Project Elephant, Bengaluru is contrary to any mandatory statutory rule. In our considered view, he has no vested right to hold the post of Commissioner, Animal Husbandry and Veterinary Services and there is no illegality or infirmity in the order impugned herein.

34. In the conspectus of discussions made hereinabove, we do not find any merit in the present Original Application and the same deserves to be dismissed.

35. Accordingly, the OA is hereby dismissed. However, there shall be no orders so as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

/ps/ksk/

Annexures referred to by the applicant in OA No. 170/00305/2020

Annexure A1 Copy of the charge taking over certificate dated 23.10.2019

Annexure A2 Copy of the Government Notification dated 18.06.2020

Annexure A3 Copy of the decisions of the meeting chaired by Chief Secretary dated 12.06.2020

Annexure A4 Copy of the Government Order dated 18.06.2020

Annexures referred in reply statement

Annexure R1 Copy of the Animal Husbandry and Fisheries Secretariat Notification dated 18.07.2017

Annexures with rejoinder

Annexure A5 Copy of the IAS (Cadre) Rules, 1954

Annexure A6 Copy of the IAS (Fixation of Cadre Strength) Regulations, 1955

Annexure A7 Copy of the Government Order dated 07.06.2013

Annexure A8 Copy of the Hon'ble Apex Court judgment in Union of India Vs. S.L. Abbas

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