

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH**

**ORIGINAL APPLICATION NO.170/00309/2020**

ORDER RESERVED ON 03.09.2020

DATE OF ORDER: 30.09.2020

**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)

Dr. Ankita Garkoti  
W/o Mr. Vijay Kumar Bhatt  
Aged 32 years,  
Residing at C 12-802,  
AWHO Sandeep Vihar,  
Whitefield – Hoskote Road,  
Kannamangla, Bangalore 560 115

....Applicant

(By Advocate Shri George Philip- through video conference)

Vs.

1. The Union of India,  
Ministry of Agriculture and Farmers Welfare,  
Krishi Bhavan, New Delhi 110 001  
Represented by its Secretary

2. The Joint Secretary,  
INM Division, DAC & FW,  
Ministry of Agriculture and Farmers Welfare,  
Krishi Bhavan, New Delhi 110 001

3. National Centre of Organic Farming,  
Hapur Road, Kamla Nehru Nagar,  
Ghaziabad 201 002  
Represented by its Director

4. Regional Centre of Organic Farming,  
Kannamangala Cross,  
Whitefield – Hosakote Road,  
Kadugodi Post,  
Bangalore 560 115

Represented by its Asst. Director

.....Respondents

(By Shri S. Sugumaran, ACGSC - through video conference)

### **ORDER**

**PER: SURESH KUMAR MONGA, MEMBER (J)**

Pleaded case of the applicant herein is that earlier she was posted as Junior Scientific Officer at Regional Centre of Organic Farming, Ghaziabad. Thereafter she was transferred to Regional Central of Organic Farming, Bangalore vide order dated 06.02.2018 where she shifted with her family from Ghaziabad in the State of Uttar Pradesh.

2. The Director, National Centre of Organic Farming, Ghaziabad vide his order dated 04.06.2020 has now ordered the applicant's transfer from Regional Centre of Organic Farming, Bangalore to Regional Centre of Organic Farming, Patna in spite of the country reeling under the COVID-19 pandemic crisis. In furtherance of order dated 04.06.2020, the Assistant Director, Regional Centre of Organic Farming, Bangalore issued an order on 04.06.2020 itself relieving her from Bangalore. The applicant on receipt of order dated 04.06.2020 made a representation to Director, National Centre of Organic Farming, Ghaziabad requesting therein to defer her transfer order in view of COVID-19 pandemic crisis. She also submitted a representation dated 08.06.2020 with the Joint Secretary, INM Division,

Ministry of Agriculture and Farmers' Welfare, New Delhi requesting therein for deferment or cancellation of her transfer order. Since the applicant did not receive any response to said representation, therefore, she submitted one more representation dated 15.06.2020 with the Joint Secretary, INM Division, Ministry of Agriculture and Farmers' Welfare, New Delhi for deferment or cancellation of her transfer order.

3. It has been averred that the Government of India through various Office Memorandums has directed that no rotational transfer shall take place until 30.04.2021. The Ministry of Home Affairs has also issued guidelines stating therein that the children below the age of 10 years should stay at home. The applicant has further stated that she submitted the representations for deferment of her transfer order as she has to travel with her 4 year old daughter and shifting with the child during the COVID-19 pandemic crisis is extremely dangerous and harmful to both, the applicant as well as her daughter. It has further been stated that the applicant has been transferred to Patna which has recorded some of the highest number of COVID-19 cases in the country due to return of migrant workers from other parts of the country. The respondents have not even considered the fact that the applicant will not be able to find out any accommodation in Patna as no landlord will give his premises on rent during the spread of COVID-19 pandemic to any person, much less the one travelling from another state. Alleging violation of her right as enshrined in Article 21 of the Indian Constitution, the applicant has invoked the jurisdiction of this Tribunal

under Section 19 of the Administrative Tribunals Act, 1985 challenging her transfer order dated 04.06.2020.

4. The respondents by way of filing their joint reply have joined the defence and opposed the prayer made by the applicant in her Original Application. It has been pleaded that the applicant is working as Junior Scientific Officer under the administrative control of the respondents. She has been transferred from Regional Centre of Organic Farming, Bangalore to Regional Centre of Organic Farming, Patna purely on merit and in public interest. The applicant has All India Service liability and the post of Junior Scientific Officer has been declared as a sensitive post, particularly in regard to Fertiliser Control Order, 1985 which is a statutory matter in respect of analysis of biofertilizers and organic fertilizers samples. The need of applicant's transfer during prevailing situation of COVID-19 has arisen because of a report of the Inquiry Committee into the matter of laboratory activities and some other activities of Regional Centre of Organic Farming, Bangalore. In the said Inquiry Report dated 03.03.2020, the Inquiry Committee has observed that the applicant is not doing the analysing work as per Fertilizer Control Order, 1985. Considering the observations made in the Inquiry Report, the respondents found no reason to continue the applicant at Regional Centre of Organic Farming, Bangalore and, therefore, she has been transferred to Regional Centre of Organic Farming, Patna in public interest.

5. Presently the Regional Centre of Organic Farming, Patna does not have the quality testing facility. The Junior Scientific Officer working there at Patna has been selected for deputation to other department by Union Public Service Commission and he is likely to be relieved shortly and joining of the applicant will replace him. The applicant has completed her normal tenure of 2 years at Regional Centre of Organic Farming, Bangalore. It has further been stated that the applicant's representation dated 04.06.2020 has been considered and vide letter dated 19.06.2020 her joining has been deferred by Respondent No. 3 till 31.07.2020 in view of COVID-19 pandemic. The deferment of the joining of the applicant is also in pursuance of the letter dated 12.06.2020 issued by Respondent No. 2. The applicant was advised vide letter dated 19.06.2020 that the intervening period shall be treated on leave based on her leave application preferred by her to Regional Centre of Organic Farming, Patna. The Regional Centre of Organic Farming, Patna has informed that they have not received any information from the applicant about her probable joining. It has further been averred that the applicant has not submitted any leave application for the intervening period to competent authorities at her transferred place and it indicates non-compliance of order and irregularity on her part. Now she has given her joining to Regional Centre of Organic Farming, Bangalore on 23.06.2020 by making reference of a letter dated 18.06.2020 issued by Respondent No.2. Whereas, she could have joined at Regional Centre of Organic Farming, Bangalore on the basis of deferment of order of joining issued by Respondent No. 3 on 22.06.2020. The Respondent No. 2 has issued two different letters bearing

No. 6-9/2020-INM (84258) and No. 5-8/2014-INM (Vol. II) (48576) which are not addressed to the applicant and production of those two letters shows her indulgence in unfair practices. The Respondent No. 3 has already intimated the Joint Secretary (INM), DAC & FW about the observation of the Inquiry Committee vide letter dated 22.05.2020 and a copy of the order dated 04.06.2020 has also been endorsed. With all these pleadings, the respondents have further asserted that the applicant's transfer order issued by Respondent No. 3 is not in violation of any rules and guidelines.

6. While filing rejoinder to said reply, the applicant, apart from reiterating the facts already pleaded in her Original Application, has further pleaded that she presented herself before Respondent No. 4 and submitted her joining report vide letter dated 23.06.2020. The Respondent No. 3 has further issued a wrongful order dated 19.06.2020 mentioning therein about the applicant's leave application only to harass her and to deny her the salary for the months of June and July, 2020. Whereas, the applicant has filed no such leave application. The applicant gave her joining report on 23.06.2020 on receipt of letter dated 18.06.2020, however, the Respondent No. 4 failed to permit her to resume duties. Instead of cancelling the transfer order pursuant to order dated 18.06.2020, Respondent No. 3 issued an order dated 03.07.2020 deferring the applicant's transfer order to Patna till 30.09.2020 or until the COVID-19 situation improves. Furthermore, the Respondent No. 3 makes no mention of any leave application in his order dated 03.07.2020 and permits the applicant to work from Bangalore upto

30.09.2020. It has further been stated that the inquiry referred to by the respondents was against the office and not against the applicant. The applicant is neither the Head of Office nor laboratory incharge. She only assisted the Assistant Director/Head of Office as per rules and instructions. As per Para 6 of the Inquiry Report dated 03.03.2020, the Assistant Director himself was preparing the final report and forwarding the same under his signature to the concerned authorities. It has further been averred that there is no observation or charge against the applicant in the said Inquiry Report and till date she has not received any complaint or memorandum from the respondents.

7. The respondents have also placed on record an additional reply stating therein that the Regional Centre of Organic Farming, Bangalore prepared and submitted two salary bills of the applicant for the months of June and July, 2020 to PAO, Chennai, for making payments to her. However, the PAO, Chennai has sought some clarification on the issue relating to applicant's joining and leave period for which the Regional Centre of Organic Farming, Bangalore has sought instructions from National Centre of Organic Farming, Ghaziabad. The Regional Centre of Organic Farming, Bangalore was asked to direct the applicant to submit her proper joining report and leave application to process her salary by PAO, Chennai.

8. Heard learned counsels for the parties.

9. Shri George Philip, learned counsel representing the applicant, while drawing our attention towards the guidelines issued by the Ministry of Home

Affairs, submitted that the travel of applicant from Bangalore to Patna in order to comply with the transfer order dated 04.06.2020 has embarked upon the rights of the applicant as well as her 4 years old daughter as enshrined in Article 21 of the Indian Constitution. Learned counsel further submitted that while entertaining the applicant's representation dated 08.06.2020, Ministry of Agriculture and Farmers Welfare vide order dated 18.06.2020 directed the Director, National Centre of Organic Farming, Ghaziabad (Respondent No. 3) to cancel the applicant's transfer order immediately under intimation to Joint Secretary, (INM). After receipt of said letter from the Ministry, the Respondent No. 3 ought to have cancelled the applicant's transfer instead of deferring it upto 30.09.2020. Learned counsel still further submitted that the Government of India also issued one more letter dated 18.06.2020 stating therein that due to prevailing conditions in the country because of COVID-19 pandemic it has been decided by the competent authority that no transfer/postings shall be made in subordinate offices till further orders and if any order of transfer has been issued during the COVID-19 period, the same shall be treated as null and void. It is the argument of learned counsel that in view of letter dated 18.06.2020 issued by the Government of India the order dated 04.06.2020 by which the applicant has been transferred to Regional Centre of Organic Farming, Patna is rendered null and void and the applicant cannot be compelled to act upon the said order. Learned counsel further submitted that since the Respondents No. 3 and 4 are not abiding by the directions issued by the Government of India vide letter dated 18.06.2020, the applicant has further



been put to another hardship as she has not got her salary for the months of June, July and August, 2020.

10. Per contra, Shri S. Sugumaran, learned counsel representing the respondents, submitted that while taking into consideration the applicant's representation and a letter dated 12.06.2020 received from the Ministry of Agriculture and Farmers Welfare, the applicant's transfer order has been deferred upto 30.09.2020 or till the COVID-19 condition is improved, whichever is earlier. Learned counsel further submitted that the applicant cannot be permitted to stay at Bangalore for all times to come as she has a liability to serve anywhere in India and, therefore, the prayer made by the applicant in Para 8 (b) of the prayer clause cannot be granted by this Tribunal.

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

12. The applicant was earlier transferred from Regional Centre of Organic Farming, Ghaziabad to Regional Centre of Organic Farming, Bangalore vide order dated 06.02.2018. In order to comply with the said order, she gave her joining at Bangalore and shifted her family from Ghaziabad in the year 2018. The Director, National Centre of Organic Farming, Ghaziabad (Respondent No. 3) vide his letter dated 04.06.2020 has ordered the applicant's transfer from Regional Centre of Organic Farming, Bangalore to Regional Centre of Organic Farming, Patna while keeping himself totally oblivious about the fact that the entire nation is

reeling under the crisis of COVID-19 pandemic. On 04.06.2020 itself, after receipt of applicant's transfer order, she was relieved from Bangalore by Assistant Director, Regional Centre of Organic Farming, Bangalore (Respondent No. 4). The applicant, on receipt of order dated 04.06.2020, immediately submitted her representation with the Director, National Centre of Organic Farming, Ghaziabad stating therein that her 4 years old daughter's travel to State of Bihar will be very difficult and it will be hard to find temporary or permanent accommodation at her new place of posting because of the prevalent conditions of COVID-19 pandemic. Since no action was taken on the said representation, therefore, she also submitted a representation dated 08.06.2020 with the Joint Secretary, INM Division, Ministry of Agriculture and Farmers Welfare requesting therein for deferment or cancellation of her transfer order from Bangalore to Patna. It appears that the said representation of the applicant was earnestly considered by the authorities in the Ministry of Agriculture and Farmers Welfare and accordingly a letter dated 12.06.2020 addressed to Director, National Centre of Organic Farming, Ghaziabad was issued making therein an observation that travelling from one State to another under the prevailing condition is highly risky. A further request was made to defer the applicant's transfer and desist from making avoidable transfers under the prevailing pandemic situation in the country. Still no action was taken by Respondent No. 3 to cancel the applicant's transfer from Bangalore to Patna and, under the compelling circumstances, she had to submit one more representation dated 15.06.2020 before the Joint Secretary, INM Division, Ministry of Agriculture

and Farmers Welfare, Government of India with a request to cancel or defer her transfer order on humanitarian grounds while looking towards the current COVID-19 pandemic situation.

13. The record reveals that the competent authority in the Ministry of Agriculture and Farmers Welfare, Government of India also gave its attention towards the subject of transfers and postings of the officers/officials in the subordinate offices during the period of COVID-19 pandemic. The competent authority in the Ministry of Agriculture and Farmers Welfare finally decided that no transfer/postings shall be made till further orders and if any order of transfer/posting has been issued during the COVID-19 period, the same shall be treated as null and void. The decision taken in this regard was also communicated to Director, National Centre of Organic Farming, Ghaziabad by the Ministry of Agriculture and Farmers Welfare vide letter dated 18.06.2020.

14. On the same very date i.e. 18.06.2020, one more letter was addressed to Director, National Centre of Organic Farming, Ghaziabad by the Ministry of Agriculture and Farmers Welfare stating therein that the Joint Secretary, INM has taken a serious note of non-cancellation of applicant's transfer order. Therefore, a direction was issued to the Director, National Centre of Organic Farming, Ghaziabad to cancel the applicant's transfer immediately under intimation to Joint Secretary, INM, Ministry of Agriculture and Farmers Welfare. Despite there being a policy decision taken by the competent authority that no transfer/posting shall be made in the

subordinate offices till further orders and the order already issued in this regard shall be treated as null and void followed by a categorical direction by the Ministry to cancel the applicant's transfer immediately, the Director, National Centre of Organic Farming, Ghaziabad did not cancel her transfer order dated 04.06.2020. It is beyond our comprehension that the Respondent No. 3, who in any case is a subordinate authority to Ministry of Agriculture and Farmers Welfare, can still have an audacity to defy the positive directions issued by the Ministry vide its letter dated 18.06.2020. In our considered view, when the Ministry of Agriculture and Farmers Welfare itself has declared all transfer orders as null and void, there was no occasion with the Respondent No. 3 to come out with an order dated 03.07.2020 stating therein that the transfer order of the applicant is deferred till 30.09.2020 and she is allowed to work from Regional Centre of Organic Farming, Bangalore.

15. As a matter of principle, the mandate of hierarchical superiors is always required to be followed for a smooth and disciplined administration. If an echelon like Respondent No. 3 in administrative hierarchy starts working at variance to mandate of his superiors, this, in our opinion, will plunge the whole administration into chaos as it will convey a message even to his subordinates to not to follow the directions of their superiors in administrative hierarchy. Such a practice needs to be curbed.

16. However, we leave it open to the Ministry of Agriculture and Farmers Welfare to ensure a mechanism during the prevalent conditions of COVID-19 pandemic where the authorities like Respondent No. 3 and 4 function according to mandate of their superiors and good administration is ensured so that the Fundamental Rights as enshrined in Article 14, 16 and 21 of Indian Constitution are ensured to subjects of the State.

17. The approach of Respondents No. 3 and 4 throughout remained highly insensitive while dealing with the applicant's case of transfer as while defying the mandate of the Ministry to cancel the applicant's transfer order, they failed to ensure the payment of her salary for the months of June, July and August, 2020. Had there been a prompt action by Respondent No. 3 to comply with the Ministry's mandate, atleast the applicant would have got her wages timely. There was no occasion with Respondent No. 3 to issue the order dated 03.07.2020 when the Ministry of Agriculture and Farmers' Welfare had declared all transfer orders issued during COVID-19 period as null and void.

18. The argument of Shri Sugumaran, learned counsel representing the respondents, that the applicant's transfer order is justified as she has a liability to serve anywhere in India, also do not find favour with us as while laying down the said condition in the terms of her appointment letter, the unprecedented situation which is now prevalent because of COVID-19 pandemic was not visualized by the employer.

19. The situation which has emerged throughout the nation because of spread of COVID-19 pandemic has posed a serious threat to human life. The unprecedented situation demanded exceptional measures and accordingly the National Disaster Management Authority (hereinafter called as 'National Authority') established under the provisions of Section 3 (1) of the National Disaster Management Act, 2005 invoked its powers under Section 6(2)(i) of the said Act and issued the directions to National Executive Committee under Section 8 (1) for issuance of guidelines for reopening of various activities throughout the nation in a phased manner outside containment zones. This is how the order dated 30.05.2020 along with various guidelines came to be issued at the instance of Union Home Secretary and Chairman, National Executive Committee wherein it was stipulated that the children below the age of 10 years are advised to stay at home. As per clause 10, violation of the said guidelines entails penal provision under Sections 51 to 60 of the '2005 Act' apart from a legal action under Section 188 of the Indian Penal Code.

20. The applicant who is admittedly having a 4 years old child had pleaded for mercy of respondents through her representations. Though the Ministry of Agriculture and Farmers Welfare vide its letter dated 12.06.2020 addressed to Director, National Centre of Organic Farming, Ghaziabad had observed that travelling from one State to another under the prevailing conditions is highly risky, still the Respondent No. 3 insisted the applicant to comply with the transfer orders. The Respondent No. 3 while adopting such

an insensitive approach, it appears to us, remained totally oblivious about the fact that a child, by reason of his physical and mental immaturity, needs special safeguards and care before as well as after birth. The welfare government like ours has always proclaimed that childhood is entitled to special care and assistance and it is always considered that a child should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. In our considered view, while keeping in view all these laudable objects of a welfare government, the National Authority had issued the directions to National Executive Committee under the provisions of '2005 Act' for issuance of the guidelines dated 30.05.2020 carrying therein a stipulation that the children below the age of 10 years should stay at home.

21. In sum and substance, the objective of the guidelines is to contain the spread of COVID-19 pandemic by laying down various norms which are required to be followed mandatorily as the violation of the same attracts the penal consequences under Sections 51 to 60 of the '2005 Act' apart from a legal action under Section 188 of the Indian Penal Code. Thus, in our view, the order dated 04.06.2020 issued by Respondent No. 3 is not only contrary to Articles 14, 16 and 21 of the Indian Constitution but it is also against the guidelines issued by the National Authority while invoking its powers under Section 6(2)(i) of the '2005 Act'.

22. The impugned order dated 04.06.2020 cannot be sustained for one more reason as the respondents while filing their reply statement have come

out with a categorical stand that the need of applicant's transfer during prevailing situation of COVID-19 pandemic has arisen because of a report dated 03.03.2020 submitted by an Inquiry Committee. According to the respondents, as per the said Inquiry Report, the applicant is not doing the analysing work as per Fertilizer Control Order, 1985. Apart from this, various other irregularities have also been observed by the Inquiry Committee in its report dated 03.03.2020. Considering the said observations made in the Inquiry Report, the respondents found that there is no reason to continue the services of the applicant at Regional Centre of Organic Farming, Bangalore and, therefore, she has been transferred to Regional Centre of Organic Farming, Patna. In our considered opinion, such an order of transfer passed by way of a penalty without even issuing a memorandum to applicant cannot be sustained in view of the principles laid down by the Hon'ble Supreme Court in **Somesh Tiwari vs Union of India and Others** 2009 (2) SCC 592 wherein it has been held in very categorical terms that an order of transfer passed in lieu of punishment deserves to be set aside being wholly illegal.

Paragraph 16 of the report reads thus:

*"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incidence of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."*



23. For the reasons recorded hereinabove, we hold that the orders dated 04.06.2020 (Annexure A2 and A3) are not only violative of Articles 14, 16 and 21 of the Indian Constitution but those are also offensive to guidelines issued by the National Executive Committee on the direction of National Disaster Management Authority while invoking its powers under Section 6 (2) (i) of the '2005 Act'. The Original Application deserves to be allowed.

24. Accordingly, the Original Application is allowed and the orders dated 04.06.2020 (Annexure A2 and A3) are hereby quashed and set aside.

25. However, there shall be no order so as to costs.

**(RAKESH KUMAR GUPTA)**  
**MEMBER (A)**

**(SURESH KUMAR MONGA)**  
**MEMBER (J)**

/ksk/

**Annexures referred to by the applicant in OA No. 170/00309/2020**

Annexure A1 Copy of the order dated 06.02.2018  
Annexure A2 Copy of the order dated 04.06.2020  
Annexure A3 Copy of the Office Order dated 04.06.2020 issued by the Assistant Director, Regional Centre of Organic Farming  
Annexure A4 Copy of the representation of the applicant dated 04.06.2020  
Annexure A5 Copy of the representation of the applicant dated 08.06.2020  
Annexure A6 Copy of the representation of the applicant dated 15.06.2020  
Annexure A7 Copy of the OM dated 11.05.2020  
Annexure A8 Copy of the OM dated 04.06.2020  
Annexure A9 Copy of the OM dated 15.06.2020  
Annexure A10 Copy of the Guidelines issued by the Ministry of Home Affairs dated 30.05.2020

**Annexures referred in MA No. 170/00172/2020**

Annexure A11 Copy of the order No. 5-8/2014-INM (Vol-II) (48576) dated 18.06.2020  
Annexure A12 Copy of the order No. 6-9/2020-INM (84258) dated 18.06.2020

**Annexures referred in MA No. 170/00221/2020**

Annexure A13 Copy of the order dated 03.07.2020

**Annexures referred in reply statement**

Annexure R1 Copy of the order dated 03.07.2020  
Annexure R2 Copy of the report of the enquiry committee  
Annexure R3 (A) Copy of the letter dated 04.06.2020  
Annexure R3 (B) Copy of the letter dated 02.03.2020  
Annexure R4 Copy of the order dated 19.06.2020  
Annexure R5 Copy of the letter from INM dated 12.06.2020  
Annexure R6 Copy of the order dated 13.07.2020  
Annexure R7 Copy of the joining report dated 23.06.2020  
Annexure R8 Copy of the letter from INM dated 18.06.2020  
Annexure R9 Copy of the order dated 04.06.2020  
Annexure R10 Copy of the order dated 13.07.2020  
Annexure R11 Copy of the order dated 17.07.2020

**Annexures with Additional reply**

Annexure I Copy of the letter dated 03.08.2020 & 29.07.2020  
Annexure II Copy of the letter dated 19.06.2020  
Annexure III Copy of the letter dated 10.08.2020  
Annexure IV Copy of the Office Order # 16/2020-2021 dated 10.08.2020  
Annexure V Copy of the explanation of the applicant dated 22.07.2020  
Annexure VI Copy of the office order dated 30.12.2019  
Annexure VII Copy of the office order dated 13.01.2020

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