

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00315/2020

ORDER RESERVED ON 07.09.2020

DATE OF ORDER: 17.09.2020

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)

T.H. Krishnegowda
S/o Honnappa 57 years,
R/a No. Shanthinagara,
Thamblapura,
3rd Main, 7th Cross, Hassan,
Working as
Skilled Farm Worker,
Central Sericultural Research
& Training Institute,
Central Silk Board,
Basic Seed Farm,
Devarayapatna, Hassan

....Applicant

(By Advocate Shri Veerendra Sharma- through video conference)

Vs.

1. The Central Silk Board,
Rep by its Member Secretary & CEO,
Central Silk Board,
CSB Complex,
BTM Layout, Madivala,
Bangalore 560 068

2. The Director,
Central Sericulture Research
& Training Institute,
Silk Building, Jayanagar
New Extention,
Hosaholalu Road,
Krishnarajapet, Mandya 571 426

3. Union of India
Rep by its Secretary
Ministry of Textiles,
Udyog Bhavan, New Delhi

4. Smt Nischita Nayak,
Scientist D,
CSRTI, Basic Seed Farm,
Central Silk Board,
Devarayapatna, Kandli (Post),
Hassan 573 217

.....Respondents

(By Shri Vishnu Bhat, Senior Panel Counsel for R1 to R3 - through video conference)

ORDER

PER: SURESH KUMAR MONGA, MEMBER (J)

Aggrieved by an order dated 02.07.2020 vide which the applicant has been transferred from Basic Seed Farm, Hassan to RSRS, Chamarajanagar, the present Original Application has been filed by the applicant under section 19 of the Administrative Tribunals Act, 1985.

2. Pleaded case of the applicant herein is that he has been working as Time Scale Farm Worker in the office of Director, Central Sericultural Research and Training Institute, Mandya (hereinafter called as 'Respondent No. 2') since 11.09.1989. Vide memorandum dated 08.09.1994, he has been brought under Time Scale Labourer. He has also been conferred with Temporary Status vide memorandum 06.06.2016 and his basic pay has

been fixed in the pay scale of Rs. 2550-3200 at par with Group D employees in the central government organizations. It has further been averred that there has been a long time demand by the farm workers to extend their age of retirement upto 60 years and, in this regard, several representations were made to grant them equal treatment with that of casual/temporary Group D employees working in various central government organizations like Coffee Board, Spice Board, National Seeds Corporation and Indian Institute of Horticulture Research etc.

3. About 37 employees had approached this Tribunal by way of filing Original Application No. 170/00299/2018 seeking a direction to the respondents to extend their age of retirement from 58 years to 60 years and the said Original Application came to be allowed on 04.03.2020. It is stated that, in total disregard of the orders passed by this Tribunal, the respondents sought to retire the casual labourers like the applicant on completion of their 58 years of age. The applicant had submitted a representation dated 27.06.2020 and he also contacted an advocate along with co-workers in order to approach this Tribunal seeking similar relief.

4. It has further been averred that the 4th respondent has developed an ill-will towards the applicant and started harassing him on daily basis. In order to harass the applicant, certain allegations have been levelled against him and a communication in this regard was given to 2nd respondent. Consequent thereto, the impugned transfer order dated 02.07.2020 has been issued by the respondents without any authority of law.

5. The respondents by way of filing the joint reply have joined the defence and opposed the applicant's prayer made in the Original Application.

6. It has been stated that the Central Silk Board (hereinafter called as 'the Board') is a statutory body created by an Act of Parliament namely the Central Silk Board Act, 1948. The Board is functioning under the administrative control of Ministry of Textiles, Government of India and its predominant function is research and development in the field of sericulture. It has established a network of units across the country. The Board staff includes scientific, administrative, technical and other operational and supporting staff doing the work to achieve the object of the Act. There is a practice of engaging workers for various manual nature of works available in the Board's research and training institutes and they are called as Time Scale Farm Workers. There is no cadre and recruitment rules for the casual labourers and they are appointed by the Directors of the institute as and when it becomes necessary. Their wages and service conditions are governed by the Board after getting approval of the same from the Ministry of Textiles.

7. It has been averred that the applicant who is working as Skilled Farm Worker (Temporary Status) is not a permanent employee of the Board. He is attending to the manual and seasonal nature of work. He is not working against a sanctioned post in the Board. It has further been averred that mere

grant of Temporary Status does not bring him at par with the other regular employees for any purpose including the age of retirement. In fact the applicant is working in P4 BSF, Hassan as casual labour since 11.09.1989. There are 12 farm workers working at P4 BSF, Hassan under the administrative control of CSR&TI, Mysore. The applicant had been creating lot of nuisance and trouble in the centre and he was spoiling the working atmosphere at rearing units and in turn hampering the day to day work. He is indulging in wilful slowing down in performance of work, abetment and instigating others. The supervisor had observed his disobedience and misbehaviour and other acts and omissions on several occasions and informed him to desist from such activities but no improvements were found in him. It has further been averred that he has been in the habit of working as per his whims and fancies and disobeys the supervisory staff. The Director CSR&TI, Mysore, being informed about his activities, visited P4 BSF, Hassan and tried to counsel him to improve his behaviour and work for the development of the office. Since the applicant remained disobedient and defiant and it was reported by Dr. Dayananda, Scientist D, therefore, he was shifted from rearing house to farm where also he did not improve his behaviour. Therefore, the Director, CSR&TI, Mysore has issued the order of his shifting to RSRS, Chamarajanagar with the approval of Member Secretary of the Board. With all these assertions, the impugned order of transfer of the applicant is sought to be justified.

8. The applicant while filing his rejoinder to reply, apart from reiterating the assertions already made in the Original Application, has further submitted that he has been working as casual labour for the past 31 years. While refuting the allegations with regard to his disobedience and misbehaviour, it has been stated that, if at all the applicant is involved in such activities, the respondents are free to initiate disciplinary action against him. It has further been stated that his transfer order is malicious as the applicant approached the Assistant Labour Commissioner (Central), Hubli in order to seek regularization of his services and the respondents were summoned to appear before him vide notice dated 01.06.2020.

9. It is the applicant's case that the order of transfer has been issued as a matter of punishment and the same cannot be sustained.

10. Heard learned counsel for the parties.

11. Shri Veerendra Sharma, learned counsel representing the applicant, while opening his arguments submitted that an order of transfer issued as a matter of punishment cannot be sustained being contrary to the principles laid down by the Hon'ble Supreme Court in **Somesh Tiwari vs Union of India and Others** 2009 (2) SCC 592. Learned counsel while drawing our attention towards a letter dated 24.06.2020 issued by the Board further argued that, in view of the extraordinary situation prevailing in the country during COVID-19 pandemic, the applicant could not have been transferred from Hassan to Chamarajanagar. In fact the respondents themselves have

decided to keep the process of Annual General Transfers in abeyance during the year 2020.

12. Per contra, Shri Vishnu Bhat, learned counsel representing the respondents, submitted that the applicant cannot take shelter of the policy decision circulated vide letter dated 24.06.2020. He has been transferred from Hassan to Chamarajanagar because he was found to be disobedient. Learned counsel while drawing our attention towards a letter dated 14.05.2020 submitted that the applicant is the main precursor for his co-workers misbehaviour and since he has been creating non working atmosphere, therefore, he has been shifted from Hassan to Chamarajanagar vide order dated 02.07.2020. Learned counsel further submitted that there is no fallacy in the order dated 02.07.2020 issued by the respondents and, therefore, the Original Application deserves to be dismissed.

13. We have considered the rival contentions of learned counsels for the parties and have also perused the record.

14. Indisputably, the applicant has been working as Skilled Farm worker with the Board for the last more than 31 years. He was conferred with Temporary Status vide order dated 06.06.2016 and still his services have not been regularized. There is no dispute with regard to the fact that he is availing his legal remedy for regularization of his services before the

Assistant Labour Commissioner (Central), Hubli and the respondents have been summoned in the said lis vide notice dated 01.06.2020.

15. In so far as the applicant's transfer order is concerned, the respondents have maintained a very categoric stand that the applicant has been creating lots of nuisance and trouble in the centre and was also spoiling the working atmosphere. He has been indulging into activities of slowing down the work performance. The supervisor had observed his disobedience and misbehaviour and other acts and omissions on several occasions. Since the applicant failed to improve his behaviour and activities, therefore, he was shifted from rearing house to farm where also he continued with his same behaviour. It appears that the applicant was also served with a memorandum dated 20.06.2020. Instead of proceeding with the said memorandum and to initiate further proceedings, the respondents have opted to issue an order of his transfer on 02.07.2020.

16. In our considered opinion, the order of applicant's transfer from Hassan to Chamarajanagar, which has been issued because of his misdemeanour, cannot be sustained in view of the principles laid down by the Hon'ble Supreme Court in **Somesh Tiwari (supra)** wherein it has been held in very categoric 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."

17. The impugned order of applicant's transfer can also not be sustained for one more reason. Admittedly, the Board vide its circular dated 24.06.2020 mandated that the process of Annual General Transfers during the year 2020 shall remain in abeyance in view of the extraordinary situation prevalent in the country due to COVID-19 pandemic. In our opinion, the respondents cannot take departure from the said policy decision only because of the alleged misdemeanour on the part of applicant. In any case, if the applicant's behaviour and conduct is found not up to the mark, the respondents can proceed against him and initiate the disciplinary action in accordance with law. But the order of transfer by way of punishment, in any case, could not have been issued being contrary to the principles laid down by Hon'ble Supreme Court in **Somesh Tiwari (supra)**.

18. For the reasons recorded hereinabove and while taking into consideration the law laid down by the Hon'ble Supreme Court in **Somesh Tiwari (supra)** the impugned order dated 02.07.2020 is held to be illegal and arbitrary.

19. Accordingly, the Original Application is allowed and the order dated 02.07.2020 (Annexure A3) is hereby quashed and set aside. However, looking towards the gravity of charges enumerated by the respondents in their reply statement, we deem it appropriate to issue further directions to the respondents to conclude the proceedings contemplated against the applicant pursuant to memorandum dated 20.06.2020 within a period of 6 months from the date of receipt of a certified copy of this order.

21. Ordered accordingly. However, there shall be no order as to costs.

(RAKESH KUMAR GUPTA)
MEMBER (A)

(SURESH KUMAR MONGA)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00315/2020

Annexure A1 Copy of the Memorandum dated 09.11.1989

Annexure A2 Copy of the Memorandum dated 06.06.2016

Annexure A3 Copy of the order dated 02.07.2020

Annexure A4 Copy of the circular dated 24.06.2020

Annexures referred in reply statement

Annexure R1 Copy of the communications dated 02.06.2020, 01.06.2020 and 14.05.2020

Annexure R2 Copy of the circular dated 11.09.2019

Annexure R3 Copy of the DOPT circular dated 10.09.1993 on grant of temporary status and regularization of casual workers

Annexures with rejoinder

Annexure RJ1 Copy of the notice dated 01.06.2020

Annexure RJ2 Copy of the proceedings of ALC dated 15.06.2020

Annexure RJ3 Copy of the memorandum dated 06.06.2016

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