

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 185/90.
T.A. No.

198

DATE OF DECISION 31.10.1990.

Dr. P.N. Bhat

Petitioner

Shri Govind Mukhoty, Sr. Counsel
with Shri S.M. Bhattacharya,
Counsel.

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri Arun Jaitly, Addl.
Solicitor General with
Shri A.K. Sikri, Counsel.

Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. B.C. Mathur, Vice-Chairman(A).

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? —

AGIPRRND-12 CAT/86-3-12-86-15,000

Amitav Banerji
(AMITAV BANERJI)
CHAIRMAN
31.10.1990.

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.185/1990.

Date of decision: October 31, 1990.

Dr. P.N.Bhat

....

Applicant.

Vs.

Union of India & Ors. ...

Respondents.

CORAM

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. B.C. Mathur, Vice-Chairman (A).

For the applicant ...

Shri Govind Mukhoty,
Senior Advocate with
Shri S.M.Bhattacharya,
counsel.

For the respondents ...

Shri Arun Jaitly, Addl.
Solicitor General with
Shri A.K.Sikri, counsel.

(Judgment of the Bench delivered by Hon'ble
Mr. Justice Amitav Banerji, Chairman)

Dr. P.N.Bhat, the applicant was appointed as the Director, Indian Veterinary Research Institute (IVRI), Izatnagar, Bareilly (U.P). The Institution, IVRI functions under the control of Indian Council of Agricultural Research (ICAR), New Delhi. The applicant was appointed by the ICAR vide Memorandum dated 1.5.1984. It was a tenure post for 5 years and it was subject to renewal by another term not exceeding 5 years. The Director enjoyed the status of Vice Chancellor of deemed University of IVRI. On the expiry of his first five years period, his term was renewed for a further period of five years vide letter dated 8.11.1988 issued by the I.C.A.R. However, by a subsequent Office Order F.No.38(17)/89-Per-III

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dated 25.1.1990 the applicant was transferred and posted as Officer on Special Duty (Bio-Technology) at the I.C.A.R. Headquarters until further orders. The applicant was asked to hand over charge to Dr. B.B. Mallick, Joint Director IVRI, Izatnagar, respondent No.5. The applicant filed a representation to the Hon'ble President of I.C.A.R. Society, Krishi Bhavan, New Delhi.

The applicant aggrieved by the order of transfer from the tenurial post has filed the present Original Application (OA) under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') and sought a relief for quashing the transfer order dated 25.1.1990 passed by the Secretary, I.C.A.R., Krishi Bhavan, New Delhi. He also sought an interim order/direction for staying the operation of the order dated 25.1.1990.

The O.A. was filed before the Principal Bench on 2.2.1990 and an interim order was passed staying the order of transfer dated 25.1.1990 and a further direction was given to the respondents that the applicant need not hand over charge till 21.2.1990.

On the above date Shri A.K. Sikri, counsel appeared for the respondents and stated that "there were certain complaints made to the President of the I.C.A.R. against the applicant and an enquiry was to be held and as such it became necessary to shift the applicant from Bareilly to Delhi." The respondents were directed to file their reply and the case was ordered to be listed on 1.3.1990 for final hearing. Interim stay was to continue.

During the hearing on 1.3.1990, a suggestion was made by the learned counsel for the applicant that the applicant would voluntarily go on two months leave, if necessary, and perhaps during this period the court could direct the respondents to complete their preliminary inquiry. The respondents counsel agreed to seek instruction in this regard. The interim order was allowed to continue, and the case was adjourned to 12.3.1990. On 12.3.1990, after hearing learned counsel for the parties, the following order was passed by Single Member Bench:

" It was agreed by all concerned that Dr.P.N. Bhat will apply for three months leave and the same shall be granted. During this period, the respondents should complete the preliminary investigations. The case is adjourned to 4.6.1990. During this period he will not be dispossessed from his official residence. (Dasti allowed)."

Thereafter the applicant had filed a Misc. Petition on 28.5.1990 bringing to the notice of the Tribunal certain other developments. One of them was that the respondents were harrassing and torturing the applicant, his wife and his daughter and the entire family have been subjected to great physical and mental torture in the form of gherraos and abuses also. It was stated that this was being done by certain vested interests and politically motivated persons who were all out to destroy the image and prestige of the applicant who was an internationally well known and eminent scientist. The applicant received an order No.38(17)/89-Per.III dated 17.5.1990 issued by the Secretary, ICAR which reads

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as follows:

" INDIAN COUNCIL OF AGRICULTURAL RESEARCH
KRISHI BHAWAN: NEW DELHI-110001.

F.No.38(17)/89-Per. III Dated: 17th May, 1990.

ORDER

Whereas a disciplinary proceeding against Dr. P.N.Bhat, Director (on leave), Indian Veterinary Research Institute, Izatnagar, is contemplated.

Now, therefore, the President, Indian Council of Agricultural Research, in exercise of the powers conferred by sub-rule (1) of the Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, as extended to the Indian Council of Agricultural Research employees, hereby places the said Dr.P.N.Bhat, under suspension with immediate effect.

It is further ordered that during the period that this Order shall remain in force, the headquarters of Dr. Bhat, Director, Indian Veterinary Research Institute, Izatnagar, should be Karnal and the said Dr.Bhat shall not leave the headquarters without obtaining the previous permission of the Director General, I.C.A.R.

Sd/- (G.C. Srivastava)
Secretary, ICAR
for and on behalf of the President,
ICAR

Copy to Dr. P.N.Bhat, Director, Indian Veterinary Research Institute, Izatnagar, 243122 (U.P). Orders regarding subsistence allowance admissible to him during the period of his suspension will issue separately. "

By this order the applicant learnt that a disciplinary proceeding was contemplated against him and he was placed under suspension and his Headquarters was changed to Karnal with an embargo that he shall not leave the Headquarters without obtaining the previous permission of the D.G., ICAR. The applicant drew the attention

of the Tribunal that the above order was in violation of the Tribunal's order. He, therefore, prayed for the ex parte stay of the operation of the order dated 17.5.1990, and for quashing the same and to restrain the respondents from dispossessing the applicant from his official residence at Izatnagar. Another prayer was that the respondents be directed to produce and place before the Tribunal the documents relating to preliminary enquiry conducted and interim as well as final report of Dr.C.Prasad Committee.

Notice was issued to the respondents returnable by 5.7.1990 and a direction was issued that original record of preliminary enquiry proceedings be made ^{available} with the counsel for the respondents for the perusal of the Tribunal. The matter was heard on 28.8.1990 when the learned counsel for the parties appeared.

In their reply on behalf of the respondents, four preliminary objections were taken:

- (i) the Application was bad for misjoinder of necessary parties, as Union of India had unnecessarily been impleaded as party when no relief had been asked for against it;
- (ii) the IVRI was one of constituent unit of I.C.A.R. which was a Society registered under the Societies Registration, Act and the relationship between it and its employees was basically contractual and the condition of transfer was one of the term of employment. Hence no fundamental/legal rights of the applicant have been violated;
- (iii) the order of transfer being one of the conditions of service was effected in public interest and such transfer does not constitute

penalty; and

- (iv) the Application was said to be misconceived, untenable and bad in law and the applicant had not come with clean hands and had concealed the material facts.

On the merits, it was stated that the order dated 25.1.1990 was perfectly valid and justified. He had filed a representation dated 27.1.1990 and without waiting the outcome of the same, he had filed the present Application which was clearly premature. It was stated that there were complaints against the applicant in respect of his functioning as Director, IVRI, Izatnagar. The complaints related to nepotism, favouritism and arbitrary acts of the applicant and it was decided that the matter be investigated. Since the applicant being Director IVRI was holding No.1 position in the said Institute, it was felt that proper investigation could not be done in case the applicant continued to remain in IVRI, Izatnagar. It was then decided that he should be transferred out of Izatnagar and the applicant was appointed as O.S.D. at I.C.A.R. Headquarters. According to the terms and conditions of his appointment, he was liable to be transferred anywhere in India., transfer being an incident of service. His transfer to the Headquarters was purely on administrative reasons and order was neither actuated with mala fides nor ^{by} any other extraneous considerations. The decision was said to have been taken by the highest authority, viz., the President, ICAR who

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was the Hon'ble Deputy Prime Minister of India. The representation of the applicant was decided by an order dated 19.2.1990. It was a speaking order and had been passed by the President of the I.C.A.R. The representation was rejected. The applicant had asked for 10 days time for handing over the charge. The Director General was pleased to grant the said time. He was given time upto 6.2.1990 for handing over the charge. However, instead of doing the needful, the applicant has filed the present C.A. and obtained the stay order.

The transfer of the applicant from IVRI, Izatnagar to ICAR Headquarters, New Delhi does not amount to removal from service. The transfer order was neither mala fide nor punitive. The transfer was in the overall interest of the administration and to maintain the discipline. On the basis of these facts, it was stated that all the grounds taken in the C.A. were totally misconceived and untenable and the applicant was not entitled to any relief nor to any interim relief and the C.A. deserved to be dismissed.

On behalf of the respondents reliance was placed on the decision of this Tribunal in the case of DR. RATNAKAR NAGARCANKAR V. U.O.I. (OA No.404/90) and the decision of the Full Bench of the Tribunal in the case of KAMLESH TRIVEDI Vs. I.C.A.R. (1988 (8)ATC 153).

A rejoinder was filed that IVRI which was an unit of the I.C.A.R. was 'State' as contemplated under Article 12 of the Constitution. Hence it was not open to the respondents to violate the rules and regulations framed for governing the transfer. The contents of the written statements and the reasons given therein were not accepted. It was submitted that the representation

dated 27.1.1990 was disposed of belatedly even after the specific direction of the Tribunal dated 5.2.1990. It was further submitted had the applicant not immediately approached the Tribunal, his case would have become infructuous. The applicant's outstanding work was the reason for giving ^{him the} second term as Director, IVRI, Izatnagar. The respondents have not shown any administrative exigency which overrides the personal and family considerations. The applicant's wife is a Principal Scientist at I.V.R.I. and it was not possible for her to leave her research projects laboratory and students. His daughter is in IXth class who could not leave her studies in the mid-session. The transfer order though couched in innocuous language was punitive in nature and the applicant was being victimised by some vested interest. It is further stated that in the present case the transfer was not an incidence of service. The appointment of applicant being tenorial, his Headquarters could not be transferred from Izatnagar. The disposal of the representation had been done with non-application of mind in a casual manner. It was urged that there was mala fide intention of the respondents. In the facts and circumstances narrated by the applicant, he was entitled to the continuance of the stay order till the final disposal of the O.A. If the stay is not continued, the O.A. would be rendered infructuous.

We have heard learned counsel for the parties at some length. The first point for consideration is about the term of appointment of the applicant as Director of IVRI. The applicant was appointed as the Director of IVRI vide Memorandum dated 1.5.1984 (Annexure-A to the OA) and it will be necessary to reproduce the relevant provisions of the same:

" Indian Council of Agricultural Research
Krishi Bhavan, New Delhi-1.

F.No. 20-3/82-Per.I

Dated the 1st May, 1984.

M E M O R A N D U M

On the recommendation of the A.S.R.B. the President of ICAR Society is pleased to offer to Dr.P.N.Bhatt, Director, C.I.R.G. Makedoom the appointment of Director, Indian Veterinary Research Institute, Izatnagar on the following terms:

1. The appointment of Dr.P.N.Bhatt to the post of Director will be on tenure basis for a period of 5 years subject to renewal by another term not exceeding 5 years.
2.
3. The scale of pay of the post is Rs.2500-125/2-3000 and his initial pay will be fixed as per rules.
4. His headquarters will be at Izatnagar for the present but he will be liable to be transferred anywhere in India.
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6.
7. On appointment he will be required to take an oath of allegiance/faithfulness to the Constitution of India or make a solemn affirmation to this effect in the prescribe form if he has not already done so.
8.
9. Other conditions of service will be governed by the relevant rules/orders/staff regulations which may be issued by the ICAR from time to time.
10.

Dr. P.N.Bhatt may please inform the undersigned of his acceptance or otherwise of this offer of appointment as also of the date by which he would, in the event of this acceptance of the

appointment, be able to assume charge of the post of Director of the I.V.R.I., Izatnagar which should preferably be within one month of the date of issue of this memorandum.

Sd/-(Y.N.NIGAM)
DEPUTY DIRECTOR (P).

To

Dr. P.N.Bhatt,
Director,
C.I.R.G., Makhdoom,
Mathura (U.P). "

The first point to be considered is about the nature of the appointment. Paragraph 1 above clearly indicates that the appointment of the applicant to the post of Director, IVRI was on tenure basis for a period of 5 years which was subject to renewal by another term not exceeding 5 years. We may pause here. There is no dispute and as a matter of fact, it is clearly admitted that it was a tenure post (1); secondly, the term was for 5 years and; thirdly, the term could be extended for another 5 years. The fact of the matter is that he was appointed initially for 5 years which was extended in 1988 for a further period of 5 years.

Paragraph 4 of the Memorandum clearly indicated that his Headquarters will be at Izatnagar but he was liable to be transferred anywhere in India. This para appears to be contradictory to the contents of paragraph 1. Paragraph 4 read with paragraph 1 makes it clear that the applicant was appointed as Director at I.V.R.I., Izatnagar for a period of 5 years and which meant that he would remain at Izatnagar. The same position would continue if his term was extended. The question of

transfer from Izatnagar did not arise unless it so happens that there was another unit of I.V.R.I. somewhere else in India to which he could be transferred. In any event, he could not ^{be} transferred anywhere unless the post was equivalent to that of Director, I.V.R.I., Izatnagar. It is further evident that he could be transferred to another Unit of the I.V.R.I. at Izatnagar or he could be transferred to another post of Director of some Institution equivalent in rank to that of the Director, I.V.R.I.

The first question arises whether he could be transferred during the tenure of his term? The second question is whether his transfer as Officer on Special Duty in the I.C.A.R. Headquarters at New Delhi was a post equivalent to the post of Director I.V.R.I. at Izatnagar? It has to be clearly borne in mind that he was employed by the Society known as Indian Council of Agricultural Research. If it was contemplated to transfer him from the post of Director of one Institute of the I.C.A.R. to another, it had to be assured that he was not being sent on a lower post. It has also come on the record and it is not disputed that his post as Director ^{equivalent to} was deemed Vice Chancellor of University of IVRI. It is, therefore, evident from the above that the post of Director of IVRI was an assignment of status and responsibility and if he was to be transferred at all, he had to be placed in a similar position ensuring that there was no loss ^{of} status, position or his service conditions.

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A question arises: whether ^{the} post of O.S.D. is equivalent to that of the Director I.V.R.I. or the deemed post of Vice Chancellor of University? We are of the view that this was not so. The position of the applicant was specified and this could not be equated with O.S.D. Consequently, he could not be moved out during his tenure unless he was found to be inefficient or unfit to hold the post. The allegation made in the present case by the respondents is that there were serious charges of corruption nepotism and favouritism etc. against the applicant and an inquiry was contemplated. If the inquiry established the allegations, his tenure could be curtailed but not otherwise.

Shri Govind Mukhoty, learned counsel for the applicant contended that even in a pre-decisional hearing there must be a fairness of procedure with elimination of element of arbitrariness. In support thereof, he cited three decisions of the Supreme Court.

In the case of MANAGEMENT OF M/S. M.S. NALLY BHARAT ENGINEERING CO. LTD Vs. STATE OF BIHAR AND OTHERS ((1990) 2 SCC 48) the Supreme Court referred to the decision of the Hegde, J., in Kraipak case ((1969) 2 SCC 262) where it was said that under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. The concept of rule of law would lose its vitality if the instrumental ~~life~~

of the state are not charged with the duty of discharging their functions in a fair and just manner. Justice Shetty then observed:

"What is thus important in the modern administration is the fairness of procedure with elimination of element of arbitrariness. The State functionaries must act fairly and reasonably. That is, however, not the same thing to state that they must act judicially or quasi-judicially. In KESHAV MILLS CO. LTD. V. UNION OF INDIA ((1973) 1 SCC 380) Mukherjea, J. said:

"The administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly."

Reference was also made to the case of NEELIMA MISRA Vs. HARINDER KAUR PAINTAL AND OTHERS ((1990) 2 SCC 746).

The Supreme Court held that the Chancellor:

"must take a decision in accordance with the provisions of the Act and the statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi-judicial exercise of power is liable to be quashed being violative of Article 14 of the Constitution. As stated in E.P.ROYAPPA V. STATE OF TAMIL NADU ((1974) 4 SCC 3) "equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch". The principle of equality enshrined in Article 14 must guide every state action, whether it be legislative, executive, or quasi-judicial."

The same view was expressed in the case of SHRI SITARAM

SUGAR COMPANY LIMITED AND ANOTHER Vs. UNION OF INDIA AND OTHERS. ((1990) 3 SCC 223).

Learned counsel for the applicant referred to two cases of the Supreme Court in support of his contention "reduction in rank accompanied by stigma must follow procedure of Article 311 (2) of the Constitution".

In VICE-CHANCELLOR, L.N. MITHILA UNIVERSITY Vs. DAYANAND JHA reported in (1986) 3 SCC 7, the Vice-Chancellor of the L.N.Mithila University, Darbhanga, transferred the respondent Dayanand Jha from the post of Principal, V.S.J.College, Rajnagar to the post of Reader in R.K.College, Madhubani. The Patna High Court held that although the two posts of Principal and Reader are carried on the same scale of pay, it could not be said that the post of a Reader is an equivalent post as that of the Principal in the legal sense. The term 'Principal' as defined in Section 2(m) of the Act means the head of the college, while the term 'Reader' as defined in Section 2(r) means a teacher of a college or the university possessing such qualifications as may be prescribed. The Supreme Court was called upon to consider the expression 'any equivalent post' used in Section 10(14) and the expression 'other equivalent post' as defined in Section 2(ka, chh), the actual word used was samakaksh. The Supreme Court held that the word 'any equivalent post' cannot have the same meaning as in the expression 'other equivalent post'. The Supreme Court

further said that:

"The true criterion for equivalence is the status and the nature and responsibility of the duties attached to the two posts. Although the two posts of Principal and Reader are carried on the same scale of pay, the post of Principal undoubtedly has higher duties and responsibilities. Apart from the fact that there are certain privileges and allowances attached to it, the Principal being the head of the college has many statutory rights, such as: (i) He is the ex officio member of the Senate. (ii) He has the right to be nominated as the member of the Syndicate. (iii) As head of the institution, he has administrative control over the college Professors, Readers, Lecturers and other teaching and non-teaching staff. (iv) The Principal of a constituent college is also the ex officio member of the Academic Council of the university. And (v) He has the right to act as Centre Superintendent in the university examinations. It is thus evident that the High Court was right in holding that the post of Reader could not be regarded as an equivalent post as that of Principal in the legal sense.....

While the Professors and Readers by reason of their learning and erudition may enjoy much greater respect in society than the Dean or Principal of a college, it does not follow that the post of Principal must be treated as equivalent to that of a Reader for purposes of Section 10(14) of the Bihar State Universities Act, 1976, as amended."

In the case of DEBESH CHANDRA DAS Vs. UNION OF INDIA AND OTHERS (AIR 1978 SC 77), Chief Justice

Hidayatullah observed that the petitioner was a member of the Indian Civil Service attached to the State Cadre. He was appointed as Secretary, Government of India, which was

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a tenure post. He was asked by the Cabinet Secretary to elect between reverting to the State service or going on leave preparatory to retirement or serving under the Government of India in a post lower than that of a Secretary. The reason given was that in view of the challenges which had arisen due to the new developments in the country the Government had to examine whether the several persons in top administrative posts were fully capable of meeting those challenges. He made representations to the Government but he was informed that the Government had decided to revert him to the parent State or he might go on leave preparatory to retirement. The pay of the Chief Secretary of the State then was Rs.3500/- a month while the pay of a Secretary under the Govt. of India was Rs.4000/- a month. The petitioner had complained that the reversion with a stigma attached to it amounted to a reduction in rank and inasmuch as the procedure under Art.311 (2) had not been followed, the reversion was not sustainable. The Supreme Court upheld the contention and held that the petitioner held a tenure post under the Government of India and his tenure in that post was ordinarily five years. There was nothing in the notification of his appointment to the tenure post to indicate that the appointment was one which could be terminated at any time and nothing turned on the use of the words "until further orders" in the notification because all appointments to tenure posts had the same kind of order.

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affected his status."

Consequently, certain directions were issued by the High Court. The order of the High Court was affirmed by the Supreme Court.

A transfer order involves not only the transfer of the person from one place to another but may involve the transfer from one post to another. Another question that arises: whether it was a transferable post or a tenure post?

A third consideration would be whether the transfer affects the status of the person or does it cause a stigma?

Similarly, a question may arise, if the transfer was to a lower post. In the present case, the applicant was holding the highest position in the I.V.R.I. and he was holding a tenure post. He had been given a second term only a few months earlier. He was not transferred to an equivalent post but he was transferred as O.S.D. The post of the Director of I.V.R.I., Izatnagar carries not only a status among the educationists and scientists but the Institution is a deemed University and the post of the Director is equivalent to that of a Vice Chancellor. There is world of difference between the post of Vice Chancellor and the post of an O.S.D. Further, the post was a tenure post and he could not be transferred. He could certainly be suspended if there was a very serious charge against him. When the order of transfer was issued, no charge had been framed against him.

We may now examine the cases cited by the learned Additional Solicitor General appearing for the respondents.

His contention was that there was nothing sacrosanct in the tenure post. If there was a case and the exigency of the situation demanded that the person holding a tenure post should be transferred, it could always be done. He cited a decision of the Supreme Court in the case of DR. D.C. SAXENA Vs. STATE OF HARYANA AND OTHERS

(1987 (2) SLJ 108). In the above case, the appellant Dr. D.C. Saxena was appointed as Chairman of the Haryana Board of School Education in December, 1985. At that time he was holding the post of Professor-Director of the Punjabi University Regional Centre, Bhatinda. His original appointment as a Chairman of the Board was for two years. While holding the post of Chairman of the Board, he received a communication from Education Department of the Haryana Government informing him that the Government may curtail his tenure of office at any time. Subsequently, on 7.6.1986, he was served with an order that his term of office had been curtailed with immediate effect and that he would cease to function as Chairman from 8.6.1986. He had challenged the aforesaid curtailment. Reference was made to Section 4-A of the Haryana Board of School Education Act, 1959 which reads as follows:

"4-A. Chairman, Vice Chairman and Members to hold office during pleasure of State Government. Notwithstanding anything contained in Section 3 or Section 4 or any other provision of the Chairman, Vice-Chairman and members of the Board shall hold office during the pleasure of the State Government."

This provision was held valid and the order of the removal of the appellant was also upheld. The only

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Relying on the above decision Shri Mukhoty argued that in the present case the applicant who was a Director, I.V.R.I. which was equivalent to that of Vice Chancellor of deemed University of IVRI, had been transferred from his tenure post to hold the post of O.S.D. at I.C.A.R. Headquarters, New Delhi. According to him, this meant reduction in Rank and this could not be done in view of the provisions of Article 311(2) of the Constitution.

Shri Mukhoty referred to the case of THE GOVERNING BODY, ST. ANTHONY'S COLLEGE, SHILLONG AND OTHERS Vs. REV. FR. PAUL PETTA OF SHILLONG EAST KHASI HILLS.

(AIR 1988 SC 2005). In this case, a college run by minority institution was getting deficit grant-in-aid from Government. A priest was sponsored by the Church authorities for being appointed as the Principal of that college. Accordingly, the Governing Body of the college appointed him as the Principal and the appointment was approved by the Director of Public Instructions. He was subsequently transferred as a teacher of a school without giving any opportunity of hearing. The Supreme Court held:

" in so far as the respondent is transferred in his capacity as priest from one division of the religious order to another the matter pertains to the internal management of the religious order and it is not justiciable. However, in so far as the order of transfer has been made by the Governing Body of the St. Anthony's College transferring the respondent from the post of Principal of the College to the post of Teacher of Don Bosco Technical School which is in another State the respondent can complain against it. Since the respondent has not been given any opportunity of hearing against the purported order of transfer outside the State which seriously

distinctive feature in this case is, when the applicant was appointed, he was not aware of the terms and conditions of his appointment for that was to be notified later. Since that contained a provision for curtailment of tenure at any time, the order was upheld.

Reference was made to the case of DR. BOOL CHAND V. CHANCELLOR, KURUKSHETRA UNIVERSITY (AIR 1968 SC 292).

This was a case dealing with the termination of services of Dr. Bool Chand who was Vice-Chancellor of Kurukshetra University. He was also a Member of the Indian Administrative Service. The Chancellor of the University terminated the services of the applicant from the Office of the Vice-Chancellor, Kurukshetra University. It was a case in which the Kurukshetra University prescribed that the appointment of a Vice-Chancellor shall ordinarily be for a period of three years. The Supreme Court held: that :

"But Clause 4(vii) of the Statutes does not purport to confer upon a person appointed Vice-Chancellor an indefeasible right to continue in office for three years: the clause merely places a restriction upon the power of the Chancellor, when fixing the tenure of the Office of Vice-Chancellor."

It was also argued therein that under Section 14 of the Kurukshetra University Act power to appoint includes power to dismiss, but not to determine employment. The Supreme Court held:

"We are unable to agree with that contention. It is true, the office of the Vice-Chancellor of a University is one of great responsibility and carries with it considerable prestige and authority. But we are unable to hold that

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a person appointed a Vice-Chancellor is entitled to continue in office for the full period of his appointment even if it turns out that he is physically decrepit, mentally infirm, or grossly immoral. Absence of a provision setting up procedure for determining the employment of the Vice-Chancellor in the Act or the Statutes or Ordinances does not, in our judgment, lead to the inference that the tenure of office of Vice-Chancellor is not liable to be determined. The first contention raised by counsel for the appellant must therefore fail."

In that case too, it was argued by learned counsel for the appellant that the Chancellor was bound to hold an enquiry against the appellant before determining his tenure, and the enquiry must be held in consonance with the rules of natural justice. It was also argued in that case that appointment as Vice-Chancellor was purely contractual, and the Chancellor had no power unilaterally to determine the contract. The respondents contention was that if there was a contractual relationship that of master and servant, termination of relationship will not entitle the servant to a declaration that his employment had not been validly determined. Their Lordships held:

"The power to appoint a Vice-Chancellor has its source in the University Act: investment of that power carries with it the power to determine the employment; but the power is coupled with duty. The power may not be exercised arbitrarily: it can be only exercised for good cause, i.e. in the interests of the University and only when it is found after due enquiry held in manner consistent with the rules of natural justice, that the holder of the office is unfit to continue as Vice-Chancellor."

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This case was cited to show that tenure of the Vice-Chancellor of the University could be curtailed. True, it could be in the case of Dr. Bool Chand under the provisions of Kurukshetra University Act. In the present case, there has been no termination of the service of the applicant as in the case of Dr. Bool Chand. But there has been an order of his transfer, which in effect, means cutting down of his tenure on insufficient ground. This has been alleged by the applicant to be arbitrary or wholly unjustified. Allegations of mala fides have also been made. In the present case, apart from the letter of appointment, there is no other provision under which the tenure of the Director, I.V.R.I., Izatnagar could be curtailed or reduced. The case of Dr. Bool Chand thus does not help the case of the respondents.

Reliance was placed on the decision of Full Bench of this Tribunal in the case of KAMLESH TRIVEDI V INDIAN COUNCIL OF AGRICULTURAL RESEARCH & ANOTHER (ATR 1988(2) CAT 116). A Full Bench of the Tribunal held that any order of transfer must be in public interest and in exigency of service on administrative ground. It must not be in colourable or mala fide exercise of power. It should not be arbitrary. It must be made by a competent authority in accordance with the rules and the instructions, if any, governing the transfer policy. The transfer must be ordered by a competent authority in bonafide exercise of power. The Full Bench also expressed the view that merely because transfer is ordered on complaints or after

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an inquiry into the guilt of the employee, it cannot be said to be by way of punishment. It was urged that a transfer even on the basis of a complaint would not come within the concept of punishment. The Full Bench reviewed a host of case law which we need not refer to. The Full Bench was constituted to consider the correctness of the case of K.K. JINDAL Vs. GENERAL MANAGER, NORTHERN RAILWAY (ATR 1986(1)CAT 304) where the question was: whether the competent authority can transfer a delinquent official on the basis of the findings of a proper inquiry conducted in accordance with Article 311(2) of the Constitution where the provisions of the said Article are applicable and/or in accordance with the rules governing disciplinary proceedings and the charges are held to be proved after following the prescribed procedure. The facts of Jindal's case pertain to a delinquent official on the basis of the findings of a proper inquiry. In the present case of the applicant, there has been no finding by any inquiry. There is a difference between a case where an inquiry has proceeded and the delinquent official has been found guilty and where no inquiry has commenced. This case is also, in our opinion, distinguishable.

Reference was made to the decision of the Division Bench of this Tribunal in the case of DR. RATNAKAR NAGARANKAR V. UNION OF INDIA (DA No.404/90) decided on 14.5.1990. The applicant who worked as Director, National Dairy Research Institute, Karnal filed an Application under Section 19 of the Administrative Tribunals Act, 1985,

challenging an order of transfer to the post of Officer on Special Duty (Education) at the I.C.A.R. Headquarters, New Delhi for being quashed. In that case it was urged on behalf of the respondents that transfer order merely involved a change in his Headquarters which was in conformity with the terms of his appointment which provided for his transfer anywhere in India. It had also been stated that the transfer order had been made in public interest and that there was no ground to consider it as illegal or unfair. This was also a case where the applicant had been appointed as Director, N.D.R.I., Karnal on tenure basis for a period of five years. He could be transferred anywhere in India in public interest, even before the expiry of said five years. In this case also a plea was taken that while functioning as Director, N.D.R.I. the applicant had the status of Vice Chancellor of ^a deemed University which he would cease to enjoy after he becomes O.S.D. or D.D.G.(Edn.). The Division Bench held that:

".. the position of the Vice-Chancellor of the deemed University being ex officio in nature, the applicant cannot claim it as a matter of right, once he is transferred from that post to another equivalent post."

The Bench also held that it will be open to the appointing authority to curtail the period of appointment to a tenurial post if it is so warranted in the public interest or in the exigencies of service. The Bench also noticed a significant feature that when the applicant was appointed as Director of N.D.R.I., Karnal w.e.f. 19.7.1985 it was also made clear that the appointment was "until further orders" and

not for a fixed term of five years from 19.7.1985.

This, in our opinion, clearly distinguishes the case of DR.RATNAKAR NAGARCANKAR from that of the applicant.

There is no such order to clarify the appointment of the applicant "until further orders". On the contrary, the applicant have completed the first five years and was reappointed for a further term of five years. It was clearly a tenurial post and the applicant did not continue "until further orders" as in the Nagarcankar's case. Consequently, we are of the view that his term could not be reduced unless there was a regular inquiry and the findings warranted a decision by the appointing authority to terminate his tenure.

Reference was also made to the cases of GUJARAT ELECTRICITY BOARD AND ANOTHER Vs. ATMA RAM SUNGOMAL POSHANI (1989(3)JT 20) and UNION OF INDIA Vs. H.N. KIRTANIA (1989(3)JT 131). These cases were of Government servants holding transferable post. The decision in these cases laid down the broad aspect that the Courts and Tribunals should not interfere with the orders of transfer made in public interest or in the course of their service. It proceeded on the basis that there was an equivalent post somewhere else to which he could as a matter of course, be transferred. Same is not the position with that of the applicant. He was holding a post of the Director, I.V.R.I. and he could only be transferred, if at all, to a similar post under the I.C.A.R.

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That was not done. He has been transferred as O.S.D., which in our opinion, is not equivalent to the post of Director, I.V.R.I.

There have been allegations also that the move was oriented so as to preclude him to become the Director General of I.C.A.R. It is not necessary to speculate on this at present.

Having considered the matter, we are of the view that the transfer of the applicant from the I.V.R.I. first to Karnal and then to the Headquarters of the I.C.A.R. at Delhi in the capacity of O.S.D. was bad in law and is liable to be set aside. The applicant was holding a tenurial post for five years and until there was a finding in a regular inquiry proceedings of his being guilty of serious charges, his tenure could not be curtailed nor could he be transferred from the post of Director, I.V.R.I. Even if he was to be transferred in public interest, it would be necessary that there was at least a clear finding that his continuance at the I.V.R.I. was contrary to public interest.

We, therefore, allow the O.A. and set aside the order of transfer of the applicant from I.V.R.I. Izatnagar to the I.C.A.R. Headquarters as O.S.D. The order of his suspension is also set aside and he is entitled to resume his charge as Director, I.V.R.I., Izatnagar (Bareilly). We order accordingly. However, the respondents are at liberty to continue the investigation and inquiry against the applicant. There will be no order as to costs.

B.C. Mathur
(B.C. MATHUR)
VICE-CHAIRMAN (A)
31.10.1990.

AMITAV BANERJI
(AMITAV BANERJI)
CHAIRMAN
31.10.1990.