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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1258/2004

New Delhi, this the 2nd day of ~~May~~ June, 2004

HON BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON BLE SHRI S.A.SINGH, MEMBER (A)

Dr. B.S.Dhillon
Director
National Bureau of Plant Genetic Resources (NBPGR)
Pusa Campus
New Delhi - 110 012. ... Applicant

(By Advocate: Sh. V.S.R.Krishna)

Versus

1. The Director General
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi.
 2. The Secretary
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi.
 3. The Deputy Secretary (P)
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi.
 4. Dr. J.L.Karihaloo
Project Director
National Research Centre (NRC) for DNA Finger
Printing, NBPGR, Pusa Campus.
New Delhi. ... Respondents
- (By Advocate: Sh. M.N.Krishnamani, Sr. Counsel with
Sh. V.K.Rao, Counsel)

O R D E R

Justice V.S. Aggarwal:-

Applicant (Dr. B.S.Dhillon) seeks quashing of the order of 19.5.2004 passed by the respondents repatriating him to his parent department.

FACTUAL MATRIX:

2. The applicant joined service in the Punjab



Agricultural University, Ludhiana. Presently he is working as Director, National Bureau of Plant Genetic Resources (NBPGR), Pusa, New Delhi. He was earlier taken as Assistant Director General (Food and Fodder Crops) in the Indian Council for Agricultural Research (ICAR) w.e.f. 19.1.1998 on usual deputation terms and conditions for a period of five years. Subsequently, the post of Director, NBPGR had been advertised. The applicant had applied for the same and had been selected. He was appointed from 11.9.2000 for a period of five years. The offer of appointment indicated:

"On the recommendation of the Agricultural Scientists' Recruitment Board, the President of Indian Council of Agricultural Research Society is pleased to offer to Dr. B.S. Dhillon, Assistant Director General (FFC), ICAR Headquarters, New Delhi the appointment as Director, National Bureau of Plant Genetic Resources, New Delhi on the following terms:-

1. The appointment of Dr. B.S. Dhillon to the post of Director, NBPGR, New Delhi will be on tenure basis for a period of five years or until further orders whichever is earlier."
2. The scale of pay of the post is Rs.16400-450-20900-500-22400 (Minimum pay to be fixed at Rs.17300/- on initial appointment).
3. His Headquarters will be at NBPGR, New Delhi for the present but he will be liable to be transferred any where in India.
4. 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. The appointment is subject to A.R.S. Rules, Rules & Bye-Laws and Regulations of ICAR society.

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5. If any declaration given or information furnished by him proves to be false or he is found to have willfully suppressed any material information, he will be liable to removal from service and such other action as may be deemed necessary."

The applicant had accepted the offer of appointment and in pursuance thereto had been so appointed on the terms and conditions referred to above for a period of five years. The appointment letter of 28.9.2000 reads:

"On the recommendation of Agricultural Scientists" Recruitment Board, President, ICAR Society has been pleased to appoint Dr. B.S.Dhillon, Assistant Director General (F&FC), ICAR Hqrs. Krishi Bhavan, New Delhi to the post of Director, National Bureau of Plant Genetic Resources, New Delhi in the pay scale of Rs.16400-450-20900-500-22400, on the terms and conditions contained in the Council's Memorandum of even number dated the 21st August, 2000, with effect from 11.9.2000 (F.N) for a period of five years or until further orders whichever is earlier."

According to the applicant, one of the posts advertised was of Deputy Director General (Crop Sciences) in the ICAR Headquarters. The applicant also applied for the same and was called for the interview.

3. The applicant's assertions are that since selection process for the post of Deputy Director General (Crop Sciences) had not been favourable to some vested interests, the respondents had issued instructions for constitution of a committee to refine the score-card/screening mechanism for direct selection. We need not delve further in this regard because according to the applicant, his tenure of

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appointment for that post was fixed and OA No.1082/2004 is pending in this Tribunal. Suffice to say that during the pendency of the said application, this Tribunal had passed an ad interim order directing the respondents not to give effect to the order of 20.4.2004.

4. The applicant's assertions are that the respondents finding themselves in a precarious situation due to the interim order and having failed to achieve their objective to foist their own candidate as Deputy Director General (Crop Sciences) had devised a method to get rid of the applicant and to teach him a lesson. In pursuance of the same, the impugned order of 19.5.2004 repatriating the applicant to his parent department, i.e., Punjab Agricultural University, Ludhiana had been passed. The impugned order reads:

"Whereas the Expenditure Finance Committee (EFC) while considering the X Plan proposals of the National Bureau of Plant Genetic Resources (NBPGR) and the NRC on DNA Finger Printing has made a specific recommendation that the NRC on DNA Finger Printing should be merged with NBPGR and shall be a single administrative entity and the same has been accepted by the Competent Authority.

2. Whereas Dr. J.L.Karihaloo, the Director of NRC on DNA Finger Printing is a regular employee of the Council and his first tenure shall expire on 22.8.2006.

3. Whereas Dr. B.S.Dhillon, a permanent employee of PAU, Ludhiana was initially appointed as Assistant Director General (F&FC) at ICAR headquarters on

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usual deputation terms for a tenure of five years w.e.f. 19.1.1998 in the pay scale of Rs.16400-22400 and subsequently on his application for the post of Director, NBPGR, New Delhi in the same pay scale he was selected and appointed as Director, NBPGR on deputation basis for a tenure of five years w.e.f. 11.9.2000 or until further orders whichever is earlier.

4. Whereas Dr. Dhillon is not a permanent employee of the Council and Dr. Karihaloo is a permanent employee of the Council, the tenure of Dr. Dhillon on his deputation with the Council has been considered in the light of the above recommendations of the EFC.

5. Whereas the tenure of deputation of Dr. Dhillon will have to be regulated as per the Government of India instructions on this issue as adopted by the Council.

6. Whereas the Government of India instructions inter-alia specify that:

(i) the period of deputation/foreign service shall be subject to a maximum of three years in all cases except for those posts where a longer period of tenure is prescribed in the Recruitment Rules i.e. five years in the instant case.

(ii) the borrowing department i.e. the ICAR in this case while according extension for the fifth year, or the second year in excess of the period prescribed in the Recruitment Rules should consider the directives issued for rigid application of the tenure Rules and only in rare and exceptional circumstances such extension should be granted.

(iii) the extension should be strictly in public interest and with the specific prior approval of the concerned Minister of the borrowing department i.e. the Union Agriculture Minister and the President of the ICAR Society in this case.

(iv) for computing the total period of deputation, the period of deputation in another post held preceding the current appointment without break in

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the same organization shall also be taken into account.

7. Whereas Dr. Dhillon has already completed deputation of five years with the Council, his further continuation has been considered for regulation as per the Government of India instructions as mentioned at Para 6(ii) & (iii) above.

8. Now, therefore, the Competent Authority after taking into consideration the facts and circumstances in its totality and the specific recommendation/decision of the EFC has found that there is no sufficient justification to extend the deputation of Dr. Dhillon in terms of public interest.

9. Accordingly, the services of Dr. Dhillon are hereby placed back at the disposal of his parent department i.e. PAU, Ludhiana in the light of the above facts and circumstances with immediate effect."

Aggrieved by the said order, the present application has been filed.

5. At this stage, it is relevant to mention that the respondents had preferred MA No.1111/2004. Notice had been given to the applicant and when the same was being argued, it was conceded at either end that the said Miscellaneous Application should be taken as reply to the Original Application and the arguments may be heard on the merits of the matter. It was in this backdrop that the arguments on the merits of the same had been heard.

LEGAL SUBMISSIONS:

6. The argument of the applicant proceeded on

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the premise that he had been appointed for a period of five years. It was a tenure post. He could not be repatriated earlier without any valid reasons. According to the learned counsel, otherwise also, the order passed has been so passed with mala fide intentions to stop the applicant from being considered for the other post regarding which OA No.1082/2004 is pending in this Tribunal. Here the learned counsel urged that the reasons that are being given are tainted, incorrect and do not stand scrutiny.

7. On the contrary on behalf of the respondents, it was urged that repatriation of the applicant does not involve any stigma. The order of repatriation is innocuous. The reasons are not arbitrary and there are no mala fides involved. According to the respondents, there are vague allegations of mala fide which are not permissible. The applicant has no right to continue in the post. He is being repatriated to his parent department. He was found redundant and in public interest, there would be wastage of money to continue him in the said post. He is being sent to his parent department in an equivalent post. Simply because another reason based on instructions issued by the Government of India was given as an additional reason would not mean that the order has become invalid. It is insisted that the period of deputation of five years has to be counted from the date the applicant joined in the year 1998.



Respondent No.4 is stated to be the Director, NRC on DNA Finger Printing. He is a regular employee of the Council and his tenure is to expire on 22.8.2006. Therefore, it was decided that the applicant, who is a permanent employee of the Punjab Agricultural University should be repatriated. The order was passed in consequence of merging of NRC with NBPGR. The order was passed with proper application of mind and in the exigencies of work.

LEGAL POSITION:

8. The basic principle which was not disputed is that in normal circumstances, a person on deputation can be repatriated even before completion of the tenure subject to just exceptions.

9. In the case of K.H. Phadnis v. State of Maharashtra, AIR 1971 SC 998, K.H. Phadnis had joined as Sub-Inspector of Excise in the Excise and Prohibition Department of the Government of Bombay in 1938. He was selected for transfer to Bombay City Police Department. In 1942, he was sent on deputation to the Civil Supplies Department as an Inspector. He worked there upto 1955. He earned various promotions therein. The post was abolished in 1955 because there was decontrol of foodgrains. He was reverted to the Excise Department. In course of time, he was promoted to the post of District Inspector in the Excise

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Department. In 1957, the Government of Bombay introduced the system of distribution of foodgrains on the basis of household cards. He was asked to go on deputation. In 1960, he was appointed to a temporary post of Controller of Foodgrains. There was some administrative action. It was decided to repatriate him to his parent department. The controversy before the Supreme Court was as to if the repatriation was by way of punishment or not. The Supreme Court held that though the Government has a right to revert a Government servant from a temporary to a substantive post still it was not a reversion simpliciter. The findings read:

"17. The order of reversion simpliciter will not amount to a reduction in rank or a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore, though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the

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nature of punishment, Article 311 will be attracted."

Similarly in the case of State of Madhya Pradesh & Others v. Ashok Deshmukh and another, AIR 1988 SC 1240, the Supreme Court held that the allegations of mala fide and bias are easily made without any material to support the same. The Supreme Court held:

"11. The High Court overlooked that the allegations of bias and mala fides are easily made but when it comes to the question of proof of such allegations, very often there will be no material in support of them. This is one such case. If mere existence of some allegations against an officer which on inquiry had been found to be untrue is to be treated as the basis for quashing any order of transfer or repatriation made in respect of any officer then almost every such order of transfer or repatriation would have to be quashed because there would always be some complaint by some party or other against every officer. Unless the Court is sure that the impugned order is really based upon such allegations it should not proceed to quash administrative orders which are made in the exigencies of the administration."

Similarly in the case of Dr. L.P. Agarwal v. Union of India & Others, (1992) 3 SCC 526, Dr. L.P. Agarwal was working as Director, All India Institute of Medical Sciences. His tenure was for a period of five years or till he attained the age of 62 years, whichever was earlier. The post was to be filled up by direct recruitment. The said person was prematurely retired. The Supreme Court held that a person holding a tenure post cannot be prematurely retired without being put to notice.



10. In the case of Ratilal B. Soni and Others v. State of Gujarat and Others, 1990 (Supp) SCC 243, once again the same question was under consideration and it was held that Ratilal B. Soni and others being on deputation could be reverted to their parent cadre at any time. They do not get any right to be absorbed on the deputation post. The findings are:

"5. The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post. We see no infirmity in the judgment of the High Court and as such we dismiss the appeal. There shall be no order as to costs."

11. Our attention has also been drawn towards a decision of the Single Bench of Delhi High Court in the case of Mrs. Aruna Bhatia v. Delhi Electricity Regulatory Commission & Others, in Civil Writ Petition No.6859/2003 rendered on 8.12.2003. The Delhi High Court referred to the decision of the Supreme Court in the case of Kunal Nanda v. Union of India and Others, AIR 2000 SC 2076 and other precedents to conclude that the basic principle underlying deputation is that the concerned person can always and at any time be repatriated to the parent department. When the terms of deputation empower the authorities to repatriate and the order does not tantamount to casting any stigma, there is little ground to interfere.

12. From the aforesaid, the following

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conclusions can conveniently be drawn:-

- (a) If a person is on deputation, he can be repatriated at any time unless it involves a stigma;
- (b) In case of tenure post, usually the tenure should be allowed to be completed but the matter has to be looked at on basis of the contract between the parties. He can always be repatriated for valid reasons.
- (c) If the order is mala fide, tainted and is not public interest and is based on wrong facts, the same cannot be sustained.

FINDINGS:

13. We have already reproduced above the impugned order. It mentions that the applicant has to complete his tenure of five years. The first and foremost question, therefore, that comes up for consideration is as to when the applicant has to complete his tenure.

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14. Admittedly, the applicant had joined as Assistant Director General (Food and Fodder Crops) in the ICAR on 19.1.1998. Thereafter, the present post of Director, NBPGR was advertised. The applicant applied for the same and was appointed vide order of 28.9.2000. The order clearly indicates that the tenure is for a period of five years or until further orders, whichever is earlier. Even the advertisement, a copy of which is at Annexure A-2 indicates that the post was on tenure basis for a period of five years. These facts clearly show that it is a tenure post. The period of tenure is five years. Since it was a fresh appointment, period of five years has to run from the date of the order of appointment.

15. The plea raised in the impugned order that the period of five years has to be counted from 1998 when the applicant joined as Assistant Director General (Food and Fodder Crops) is fallacious and patently incorrect. Since the applicant applied for a fresh post advertised for a tenure of five years as even indicated in the impugned order, the respondents have no basis to contend that the period of five years has expired and therefore, the applicant can be repatriated.

16. Even if for the sake of argument, the contention of the respondents was to be accepted, five years would have expired on 19.1.2003. We fail to understand as to in the absence of the fresh order

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having been passed thereafter the applicant was allowed to continue. We hasten to add that, in any case, the said contention has no merit because the applicant had been appointed for a fixed tenure which was a fresh appointment in pursuance to the fresh advertisement.

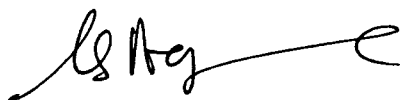
17. Some controversy was raised during the course of the submissions as to whether the applicant was on deputation or he was on a tenure post. Merely because if the applicant now and then mentions that he is on deputation will not take away the character of the post which as advertised and as per the appointment letter was a tenure post.

18. It is true that the order indicated that the appointment is for a period of five years or until further orders, whichever is earlier. But herein it **on this count** is not a case of premature repatriation. The order does not refer to any such premature repatriation. The expression "until further orders" would only be applicable in such cases where the question of premature repatriation arises. In the present case, during the course of submissions, so far as the work and conduct of the applicant was concerned nothing has been so indicated which would be adverse to the applicant. As would be noticed hereinafter, the other reason given to repatriate the applicant also does not stand scrutiny.

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19. The said other reason which is mentioned in the opening paragraph of the impugned order indicates that the Expenditure Finance Committee (EFC) had considered the Plan proposals of NBPGR and NRC on DNA Finger Printing. It had made a recommendation that the NRC on DNA Finger Printing should be merged with NBPGR and there should be a single administrative entity. Dr. J.L. Karihaloo who was working as Director of NRC on DNA Finger Printing was said to be a regular employee of the Council. Since the applicant was permanent employee of the Punjab Agricultural University, Ludhiana, he was being repatriated.

20. During the course of submissions, the learned counsel for the applicant highlighted that so far as the post of Director, NBPGR is concerned, it is a higher post than what was being held by Dr. Karihaloo. The post held by the applicant of Director could not be filled up by this administrative order. Dr. Karihaloo could not even be made to work against the post of the applicant as Director. We find that the said submission cannot be ignored and has basis. It is for the added reason that it was highlighted that Dr. Karihaloo even had applied for the post of Director which is presently held by the applicant and it was the applicant who was selected. Suddenly by this process a person working on a lower post cannot be made to work on a higher post on the plea being adopted that because of merger of NRC on DNA Finger



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Printing with NBPGR he should be made to work on the said post.

21. In fact, our attention was drawn towards the Minutes of the Meeting of DARE/ICAR held on 19.11.2003 under the Chairmanship of Secretary, DARE and circulated on 28.1.2004. Paragraph 50 of the same reads:

"50. The EFC decided that the existing NRC on DNA Fingerprinting will be merged with NBPGR and it will become as a Division of NBPGR. The mandate of DNA Finger Printing will be in-corporated into mandate of NBPGR. The present Director of NRC DNA Fingerprinting will work till his tenure thereafter the NRC DNA fingerprinting will work as a Division of the NBPGR. On this account no existing manpower or equipment etc. will be reduced i.e. they will remain as it is. The pay & allowances of the scientists and staff of NRC DNA Fingerprinting will be met from Non-Plan budget w.e.f. 1.4.2004 (will form part as Non-Plan budget of NBPGR)."

The above said facts clearly reveal that the decision was that the post held by respondent No.4 will continue to exist. He was to work till his tenure. What is now being done is totally contrary to the same. These reasons make us to conclude that the repatriation of the applicant is without any valid grounds. The reasons are rather incorrect and that prompts us to conclude that it lacks bonafide. As a consequence thereto, the impugned order, therefore, cannot be sustained.

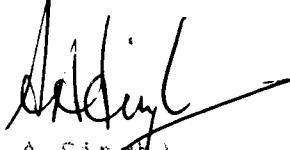
22. For the reasons given above, we allow the


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present application and quash the impugned order. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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