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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.586/2004

New Delhi, this the 25th day of August, 2004

Hon'ble Shri S.K. Naik, Member(A)

Dr.Vinod Tiwari
Principal Scientist (Plant Breeding)
Division of Genetics
Indian Council of Agricultural Research
Pusa, New Delhi-110012

.. Applicant

(Shri Devendra Singh, Advocate)

versus

1. Secretary
Indian Council of Agricultural Research
Krishi Bhavan, New Delhi
2. Director General
ICAR, Krishi Bhavan, New Delhi
3. Deputy Director General(Crop Sciences)
ICAR, Krishi Bhavan, New Delhi
4. Dr.H.S. Gupta
Director, Vivekanand Parvatiya Krishi Anusandhan Sansthan
Almoraa-263601, Uttaranchal
5. Joint Director (Administration)
ICAR, Pusa, New Delhi

.. Respondents

(Shri R.Venkataramani, Sr. Council with S/Shri Satish Kumar and Ashok Panigrahi, Advocates)

ORDER

1. Applicant, working as Principal Scientist (Plant Breeding) with the respondent-council, had earlier filed OA No.1902/2003 inter alia challenging the order dated 1.5.2003 by which he was transferred from Delhi to Vivekanand Parvathiya Krishi Anusandhan Sansthan(VPKAS), Almora and making serious allegations of malafide against Dr.H.S.Gupta (Respondent No.4 in the said OA as also in the present OA). That OA was allowed by the Tribunal vide order dated 15.12.2003, transfer order dated 1.5.2003 was quashed and set aside and the respondent-department was given liberty to transfer the applicant to any other Institute except under Respondent No.4.

2. In pursuance thereof, respondent-council has transferred the applicant to CRRI Regional Research Station, Gerua (Assam) with immediate effect vide order dated 23.1.2004 which is under challenge in the present OA

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3. Though the facts have already been discussed at length and duly taken care of by the Tribunal while disposing of applicant's earlier OA (supra), it would be relevant for the purpose of adjudication of the present OA to repeat here some of the relevant facts viz. that the applicant was initially appointed as Principal Scientist in VPKAS, Almora vide order 16.10.2000 where he took over charge w.e.f. 2.12.2000. As per the R/Rules for the said post, one of the essential qualifications is "Specialisation and experience of research in breeding of major crops grown in hills and one of the duties of the said post is to plan, conduct and guide research on major diseases of hill crops. Thereafter, he was transferred to ICAR, New Delhi at his own request during October, 2002. Now the present impugned order has been passed.

4. Learned counsel for the applicant has challenged the impugned order mainly on the grounds that the order has been passed by Respondent No.2 with malafide intention of victimizing the applicant and shielding R-4, against the transfer policy evolved by the respondent-council R-2 has neither taken applicant's consent nor that of Director, ICAR which is an essential condition before transferring any Scientist from one Institute to another and that no research in wheat breeding takes places in Gerua and therefore the transfer is punitive in nature.

5. On the other hand, learned senior counsel for the respondents has strongly contested the application and denied the contentions advanced by the counsel for the applicant. He has taken the preliminary objection that when the applicant has been transferred to an institute where R-4 is not working as per the direction and liberty granted by the Tribunal (supra) he cannot be allowed to challenge the transfer order. According to him, the transfer of the applicant is in public interest and also on considering his qualifications and experience and in tune with the Tribunal's direction (supra). In fact, the applicant has already been relieved from IARI, New Delhi on 28.1.2004 and instead of joining duty at the new place of posting, he has resorted to making baseless allegations and has chosen to file the present OA. There is no malafide or bias on the part of respondent-council. He has contended that as per the guidelines of the Council, transfer is not permitted in the case of directly recruited scientists till they complete the mandatory period of 5 years at the initial place of posting. However, as a special case, the applicant was transferred to IARI, Delhi in October, 2002. Subsequently, due to shortage of plant breeders at VPKAS, for various reasons like many Scientists had proceeded on deputation or on selection to higher posts etc. the whole position was reviewed and the applicant was posted back to Almora in public interest and considering the fact that he has been specifically selected by the Board for the post at Almora, which transfer the applicant had already challenged and got it quashed.

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6. The learned senior council has contended that the applicant was selected as Principal Scientist (Plant Breeding) as is evident from the offer of appointment and not as Principal Scientist (Wheat Breeding) and therefore he was expected to work on breeding of any crops. He was permitted to work on wheat and was given independent programme on rajmash and pigeon pea as per his experience. He was also expected to plan and conduct research on two pulse crops that were of paramount importance to the economy of the hills. Therefore his contention that he should have been given the work of only wheat crop and no research work in wheat takes place in Assam is of no relevance and this contention has to be rejected, he contends. The transfer order is just and proper on administrative exigencies and in public interest as well./ According to the senior counsel, the transfer has been ordered with the approval of competent authority i.e. Director General, ICAR and therefore the contention of the applicant that his consent should have been taken before he is transferred has no force and need s to be rejected. When the Tribunal has given liberty to the respondent-council to transfer the applicant to an Institute not headed by R-4, respondents are within their right to transfer the applicant where his services can be better utilized in the interest of work. The learned senior counsel has contended that transfer has been ordered in accordance with the transfer guidelines. He has denied that R-2 is shielding R-4 and the transfer is punitive in nature. He has also cited various judicial pronouncements to contend that Tribunal cannot interfere with the transfer order passed in the exigencies of administration and in terms of the guidelines of the Council on the subject of posting/transfer.

7. I have heard the learned counsel for the parties and perused the pleadings available on record.

8. At the outset, it may be stated that it is well settled legal position that who should be transferred where is a matter for the appropriate authority to decide and unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Tribunal cannot interfere with it. Though the applicant has made allegation against R-2 that he is shielding R-4, against whom the applicant has made allegations earlier while filing earlier OA, it is not for the Tribunal to make roving enquiry into this matter. As far as the applicant is concerned, he was basically selected and appointed to the post of Principal Scientist to perform duties among others to plan, conduct and guide research on major diseases of hill crops. He was appointed and posted at Almorah being a hill station as per the recruitment process but he was transferred to Delhi at his own request. When he was posted back at Almorah, he again made several allegations against the Director of the Institute and it was as a result of this that the Tribunal considered this aspect and gave liberty to the respondent-council to transfer to a place where R-4 is not

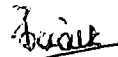
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working. It was in pursuance of this order that he has been transferred to a hill station in Assam where the respondent-council can better utilize his services.

8. I find that the various other averments made in the OA and which have been argued at length by the learned counsel for the applicant have either been already taken up in the earlier OA which formed the basis of the judgement passed therein or are not germane to the main issue of transfer involved in the present OA and therefore I am not inclined to discuss them here.

9. On the question of the transfer order which has been impugned, I am afraid, it cannot be said to have been passed by Respondent No.2 in mala fide exercise of power or is arbitrary and therefore it does not warrant any interference by the Tribunal. In the result, the OA is dismissed with no order as to costs.


(S.K. Naik)
Member(A)

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