

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 1230 of 1996

Allahabad this the 14th day of May 1998

Hon'ble Mr. D.S. Baweja, Member (A)

Balwant Rai, aged about 46 years, S/o Late Atma Ram, Assistant Administrative Officer, National Research Centre For Weed Science, Jabalpur, R/o 124, Ram Nagar, Adhartal, Jabalpur, M.P.

Applicant

By Advocate Sri K.P. Singh

Versus

1. Union of India through the Secretary, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
2. The Director, National Research Centre for Weed Science H.I.G. Quarter A-11, M.P. Housing Board Colony, Maharajpur, Jabalpur, M.P.
3. The Under Secretary (Admn. ), Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
4. Shri Noni Raja, Assistant Administrative Officer, National Research Centre on Agro Forestry, IGFRI Campus, Pahuj Dam, Gwalior Jhansi Road, Jhansi, U.P. 284003.

Respondents

By Advocates Sri J.N. Tiwari,  
Sri N.P. Singh.

O R D E R

By Hon'ble Mr. D.S. Baweja, Member 'A'

This application has been filed seeking the relief of quashing the impugned transfer order dated 04.1.1996 and directing the respondents to continue the

applicant as Assistant Administrative Officer, National Research Centre for Weed Science, Adhartal, Jabalpur, M.P.

2. The applicant while working as Assistant Administrative Officer, under the above referred Institute has been transferred as per order dated 04.1.1996 from Jabalpur to National Research Centre on Agro Forestry, Jhansi. Being aggrieved by the transfer order, the present O.A. had been filed in Jabalpur Bench on 18.1.1996, which had been subsequently transferred to this Bench.

3. The applicant has assailed the transfer order advancing the following grounds;

(a) The transfer of the applicant is inter-institutional and the transfer order has been passed in violation of Rule 5 of the Manual of the administrative instructions of Indian Council of Agricultural Research as the applicant is not subjected to the liability of the transfer to another Institute.

(b) The impugned order of transfer seeks to transfer the applicant on the grounds of impartial inquiry and in the interest of discipline of the Institution. The charge-sheet had been issued to the applicant on 22.12.1995 and the applicant had submitted his defence on 04/5-1-96. Before even considering the reply of the applicant and taking a decision that conducting of inquiry is necessary, the transfer of the applicant has been ordered which indicates that transfer is not in the interest of administration but has been ordered by way of colourable exercise of power to harass and punish the applicant. The transfer order is, therefore, penal in nature.

(c) The transfer order has been issued in the mid session, seriously affecting the education of the children of the applicant.

4. The respondents have opposed the O.A. through the counter-affidavit. The respondents have submitted that a large number of complaints were received against the applicant and the Director of the Institute alleging that <sup>the</sup> two in collusion have been committing irregularities. A fact finding inquiry was ordered and the applicant and the Director of the Institute were asked to explain their conduct based on the report of the fact finding inquiry. After consideration of the fact finding inquiry, the competent authority has decided to issue the charge-sheet to the applicant. Alongwith issue of the charge-sheet, the competent authority has also considered it necessary to transfer the applicant to another place as continuing of the applicant in the present Institute was not in the administrative interest and also to avoid any possibility of tampering with the record. The respondents, therefore, contend that the applicant has been transferred for conducting the impartial inquiry and in the interest <sup>and discipline</sup> of the Institute <sup>transfer is</sup> any not actuated by any malafide intention or extreaneous considerations. The respondents also strongly refute the contention of the applicant, stating that the transfer is not the result of any bias in the mind of the competent authority pre-determined to punish the applicant. It is also submitted that the transfer order has been engineered at the whims and fencies of certain persons, is baseless. The respondents, based on these averments, make a plea that the application is devoid of any merits and deserves to be dismissed.

5. The applicant has rebutted the averments of the respondents through the rejoinder-affidavit, re-affirming the grounds taken in the O.A. The applicant contends that the entire record pertaining to the charge-sheet issued to the applicant is in possession of the Indian Council of Agricultural Research(I.C.A.R.) and there is no question of tampering with the record by the applicant. In view of this, the applicant contends that this contention of the respondents is only an excuse to shift the applicant from the Institute at Jabalpur.

6. On 22.1.1996, the interim order was passed to maintain the status quo as on date. This interim order was extended from time to time till 29.11.1996. Thereafter the interim order was not extended. However, on the misc. application filed by the applicant, the interim order was again restored as per order dated 28.4.97 and the same continued till the pronouncement of the order.

7. The applicant through the misc. application no. 2941/97 made a prayer for directing the respondents to produce certain documents for perusal of the Bench. After considering the prayer of the applicant, as per order dated 25/9/97, only the documents mentioned in para-3(a), (b) and (c) were allowed to be produced by the respondents. Accordingly the respondents have made available these documents during the hearing.

8. The matter was finally heard on 27.2.98 in the absence of the counsel for the applicant and the order was reserved. The hearing of the matter was done in the absence of the counsel for the applicant in view

of the order dated 08.12.97 as per which it was provided that no adjournment to either of the parties shall be allowed on the next date as the matter was getting adjourned on several dates. However, subsequently the applicant filed a misc. application no. 803/98 explaining the reasons as to why the applicant could not be present on the date of hearing and made a request that the applicant be allowed to argue the matter in the interest of justice. This misc. application was considered on 01.4.1998 when the counsel for the respondents was also present. Keeping in view, the reasons advanced by the applicant, the misc. application no. 803/98 was allowed. However, instead of making oral submissions, both the parties agreed that they will submit written arguments. This prayer was allowed and accordingly both the applicant as well as the respondents have submitted the written arguments. Sri K.P. Singh, learned counsel for the applicant and Sri J.N. Tiwari and Sri N.P. Singh, learned counsel for the respondents were argued on the matter.

9. Counsel for the applicant has cited the following case laws in the written arguments in support of his <sup>above</sup> referred grounds;

- (a) Ratan Lal Sharma Vs. The Managing Committee, Dr. Hari Ram Higher Secondary School and Others A.I.R. 1993 S.C. 2155
- (b) Home Secretary, Union Territory of Chandigarh Vs. D.S. Grewal J.T. 1993(4) S.C. 387
- (c) State of U.P. and another Vs. Shesh Mani Tripathi 1991(ii)U.P.L.B.E.C. 1303
- (d) Pradeep Goyal Vs. Regional Manager, Region I Ind State Bank of India, zonal Office, Meerut and others (1991) 1 U.P.L.B.E.C. 223
- (e) A.K. Shukla Vs. U.O.I. & Ors., decided on 14.2.1997. in O.A. No. 1224/96.

10. The grounds advanced by the applicant assailing the transfer order have been detailed in para-3 above. One of the ground taken by the applicant is that transfer has seriously affected the education of his children. It is conceded that any transfer may cause hardship to the employee. But hardship caused to the employee, cannot be a ground for judicial interference. It would be for the administration to consider <sup>the issue of hardship on</sup> the facts of the case. In this connection the reference is made to the judgment of the Hon'ble Supreme Court in the case of 'State of M.P. Vs. S.S. Kaurav A.I.R. 1995 S.C. 1056' Keeping in view what is held by the Hon'ble Supreme Court in this judgment, the ground of hardship caused to the applicant, cannot vitiate the transfer order.

11. The second ground of attack is that the transfer order has been passed in violation of Rule 5 of the Manual of Administrative Instructions of Indian Council of Agricultural Research. The applicant has stated that he belongs to the post which is institution based and, therefore, not subjected to the liability of the transfer in terms of the sub rule 5.1.3 of the ~~above-referred~~ Chapter-16 of Manual of Administrative Instructions. The applicant has brought on record the extract of the instructions. I have carefully gone through the instructions and note that in rule 5.1.3, it is provided that in respect of the Scientific as well as Non-Scientific post, to which the recruitment is made wholly through by way of promotion, inter-institutional transfers against equivalent post, have to be made only on mutual transfer basis, provided the persons are acceptable to the Directors of both the Institutes. The applicant has not brought the complete Manual of Instructions <sup>on record</sup> and, therefore, it is not clear

whether Indian Council for Agricultural Research has the power to transfer such category of staff on the administrative reasons. However, from these provisions of Rules, it is noted that the intention is that transfers to such post, from one institution to another should not be allowed as this will effect the promotion prospects of the staff of the Institution. However, these rules do not specifically bar that no transfer can be done in the interest of administration. These instructions are mainly to protect promotional ~~the~~ interest of the staff. Further it is noted that though the cadre of the Assistant Administrative Officer is institutional basis, further grades constitute a combined cadre. This would imply that for promotion to <sup>next grade of</sup> ~~the~~ Administrative Officer ~~grade~~, inter-se seniority as Assistant Administrative Officer will count. Therefore, the transfer of the applicant from one Institution to another will not effect his further promotion as Administrative Officer. Infact the applicant has not brought out whether inter-institutional transfer will effect his career. He ~~has~~ only opposed his transfer quoting the Rule 5.1.3 without indicating any implication on his career. Further the applicant has taken a plea that the transfer has been ordered without taking the consent of the Head of the Institution. As indicated earlier, the respondents were directed to produce the some documents. The respondents have made available these documents alongwith the file containing the development leading to the transfer of the applicant. I have gone through the notings on the file and find that transfer of the applicant has been ordered after due deliberations at the highest level and after consulting the controlling authorities of the Institutes. Keeping these observations in view, I am unable to subscribe to the view of the applicant that the transfer of the applicant has been done in violation of

the statutory rules. The applicant has cited the judgment of 'The Home Secretary, Union Territory of Chandigarh Vs. D.S. Grewal'.

I have carefully gone through this judgment. The Hon'ble Supreme Court has laid down that policy guidelines are relatable to the executive power of the Administration, and having enunciated a policy of general application and having communicated to all concerned, the administration is bound by it. The ratio of this judgment does not apply to the case of the applicant. In view of the observations made earlier, <sup>and</sup> a view has been held that the transfer of the applicant does not violate the statutory rules.

12. The third and the last ground of attack is that the transfer order is punitive in nature. It is admitted fact that the applicant has been issued charge-sheet on 22.12.95. The applicant submits that he had submitted reply to the charge-sheet on 04/5-1-96 and even before considering his defence and decision being taken by the competent authority whether to proceed with the disciplinary proceedings, the competent authority had taken a decision to transfer the applicant. The applicant contends that this action of the respondents indicates that the competent authority was pre-determined to transfer the applicant to harass and punish him with colourable exercise of his power. The applicant has cited three judgments as indicated earlier in support of his contentions. In the case of 'Ratan Lal Sharma Vs. Managing Committee' , the Hon'ble Supreme Court has held that the deciding authority must be impartial and without any bias. As indicated earlier in the present case, the respondents have disclosed the reasons for transfer and further from the noting of the file it is seen that the transfer has

been ordered after careful deliberation at various levels. The applicant has not named any authority who was biased against the applicant and transferred him with malafide intentions. In the absence of any such ground, the ratio of this judgment of the Hon'ble Supreme Court to the case of the applicant does not apply. The second judgment cited is that of 'State of U.P. and Another Vs. Shesh Mani Tripathi' of Hon'ble High Court, Allahabad. Here the petitioner was transferred on the complaint made by the subordinate officer against whom the petitioner had taken action. In this case no inquiry with regard to the complaint was made and the petitioner was simply transferred. The facts and circumstances of the case are entirely different from the facts of the present case, as in the present case the complaint against the applicant had been investigated through the fact finding inquiry and thereafter a charge-sheet was issued to him. Therefore, what is held in this judgment, does not come to the rescue of the applicant. The third judgment cited is in the case of 'Pradeep Goyal Vs. Regional Manager, State Bank of India, Meerut'. Here the petitioner was suspected to have been involved in fraudulent transaction and the petitioner was transferred with the indication in the transfer order that he is being transferred for suspected observed involvement in fraudulent transactions. It was        that the conclusion with regard to misconduct had been arrived at without completing the disciplinary proceedings and, therefore, it was held that the transfer is by way of punishment. In the present case on going through the transfer order, it is noted that no findings with regard to misconduct have been indicated. The applicant has been charge-sheeted and the reasons necessitating the transfer of the applicant, have been disclosed in the counter-affidavit. Therefore, on the facts, the present O.A. is

entirely different from the case of the petitioner in  
Pradeep Goyal's case.

13. The respondents in the counter-affidavit have brought out that the transfer of the applicant was considered necessary by the competent authority in the interest of administration to ensure that no tampering with record is done by the applicant. The applicant has taken a plea that all the record connected with the inquiry is in possession of the Indian Council of Agricultural Research and there is no occasion for any tampering by the applicant. I am unable to appreciate this contention of the applicant. This is a matter which is to be examined by the competent authority and he has to form opinion whether tampering with records on account of continuing of the applicant in the Institute is likely. From the facts brought out, it is noted that there were several complaints of irregularities committed by the Director of the Institute in collusion with the applicant. In such circumstances, the possibility of applicant causing interference with the disciplinary and tampering with the evidence proceedings if continuing in the same Institution, cannot be ruled out. As indicated earlier, the decision taken by the competent authority with regard to the possibility of the tampering-- with the inquiry cannot be a subject of the judicial interference until and unless it is alleged that such a decision has been motivated by the malafides. From the averments made, I do not find that any malafides have been alleged against the competent authority. The applicant in the rejoinder-reply has made some vague allegations that some officers in the Institute had ganged up against the applicant as he while working as Assistant Administrative Officer had pointed out certain financial and other certain irregularities against those officers.

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different  
Since the transfer has been done by L authority, any  
allegations against the group of the officers of the In-  
stitute is not relevant and cannot make the ground for  
malafides. The applicant has neither named the authority  
who acted malafidely nor he has made anybody/respondent  
by name. In the absence of any foundation laid down malafides  
against the competent authority / for his transfer, no  
judicial interference can be made incase the competent  
authority considers it necessary to transfer the applicant  
so that he could not tamper with the record. Such a transfer  
cannot be termed as punitive in nature as no findings with  
regard to misconduct have been arrived at and the applicant  
has been given opportunity to defend himself through the  
disciplinary proceedings. The applicant has cited the  
order dated 14.2.97 of this Bench in the case of A.K. Shukla  
Vs. Union of India and Others. On going through this order,  
it is noted that the transfer order has been quashed on  
recording of the findings based on the facts and circumstances  
of the case that the / transfer order has been passed by way of punish-  
ment and not in the interest of administration. In the matter  
of transfer, each case of challenge has to be examined on  
merits on the  
its own facts and circumstances to identify whether the  
transfer order is not actuated by malafides or colourable  
exercise of power. Therefore, the ratio of order of judg-  
ment does not apply in straight jacket. As indicated  
earlier, in the present case g cogent reasons have been  
advanced by the respondents which necessitated the transfer  
of the applicant in the interest of administration. There-  
fore, the ratio of this judgment does not apply to the case  
of the applicant directly.

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14. An the light of the above discussion,  
I am unable to find any merit in the O.A. and the same  
is dismissed accordingly. The interim order is vacated.  
No order as to costs.

*D. H. Bainbridge*  
Member (A)

/M.M./