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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 20th day of Jan 2006.

Original Application No. 1453 of 2005.

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

Dr. S.R. Qamra. Assistant Director,
Central JAIMA Institute for Leprosy and other
Mycobacterial Diseases, Tajganj, Agra.
D/o Sri Suraj Krishana, R/o P-21 Taj Nagari,
Phasi-I-Agra.

.....Applicant

By Adv: Sri I.M. Tripathi

V E R S U S

1. Union of India through Secretary,
Ministry of Health and Welfare, Nirman Bhawan,
NEW DELHI.
2. Director General, Indian Council of Medical
Research, Ansari Nagar,
NEW DELHI.
3. Assistant Director General (Administrative),
Indian Council of Medical Research,
Ansari Nagar,
NEW DELHI.
4. Sri V.M. Katoch, Director, Central JALMA,
Institute for Leprosy & other Mycobacterial
Diseases, Tajganj,
AGRA.

.....Respondents

By Adv: Sri M.B. Singh

O R D E R

Transfer of the applicant vide order dated 16-12-2005 from Agra to Jabalpur, (where from she was posted to Agra in 1990) is the challenge in this case. The challenge is on the ground inter alia of mala-fide (against Respondent No. 4) and that no

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public interest is served in transferring the applicant with post.

2. Initially, in the absence of the respondents, when the case was heard, while granting stay of the transfer order, short notice was issued to enable the respondents to enter appearance and also to file a short reply for consideration of continuance or otherwise of the interim relief, and as there was no appearance from the side of the Respondent, despite, as per the submission of the counsel for the applicant, due notice as to the date of hearing of the case, the interim order was continued and the submission that no counter was filed by the respondents was recorded. However, during the Christmas vacation, when the case came up, it transpired that the respondents not only entered appearance but also preferred a short counter, after duly serving upon the counsel for the applicant a copy of the same which fact was thoroughly eclipsed by the counsel for the applicant when the stay was continued. This has resulted in the Tribunal staying the stay order and after completion of pleadings, the case was taken up for final hearing.

3. Brief facts of the case:-

- a. The applicant joined on 30.10.1984 on the post of Research Officer at Jabalpur in Regional Medical Research Centre for Tribal (hereinafter referred to as "RMRCT") situated at Jabalpur. Later on, at her request the applicant was posted at Central

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JALMA Institute for Leprosy and other
Microbacterial Disease (CJIL) Agra.

- b. Due to complaints of the Director R.MRCT made against the applicant, an enquiry on the basis of vague charges held, which was after all proved false and fabricated and the Government of India Ministry of Health & Family Welfare (Department of Health) passed on order dated 13.07.1994 directing the opposite party No. 2 and 4 to comply with the directions specified therein.
- c. From the date of order dated 13.07.1994 the applicant was continuously making representations/applications to the opposite party No. 2 but he never heard the matter and never considered. At last the applicant again made application dated 10.03.2003 and again made further applications dated 2.3.2005, 16.8.2005 and continuously requested to consider her grievances in compliance with the order dated 13.07.1994.
- d. The applicant through the aforesaid not only agitated her own grievances but agitated the grievances of the other officers and employee in the aforesaid institution.
- e. A body known as National AIDS Control Organization (NACO) has passed the project. The applicant was directed to start the project and administer it at the aforesaid institution and to educate the public about the HIV/AIDS as per objective of the project. The opposite party No. 2 never permitted the applicant to progress in the aforesaid project.
- f. On 13.06.2005 the respondent No. 4 wrote a letter to the applicant to pressurize to pass the bills and expenditure towards the project. Applicant refused to pass the aforesaid bills on the ground that she wants verification of the accounts sought to be sanctioned by her. The opposite party No. 4 applying coercive measures started threats to the applicant.
- g. In consequences of the aforesaid, the opposite parties No. 2 3 & 4 withheld the promotion of the applicant and various facilities have been cancelled.
- h. Due to aforesaid, the respondent No. 4 made approach with the respondent No. 3 with malafide intention and ulterior motive has

made so many oral complaints against the applicant which the authority without showing cause without any enquiry without giving opportunity to be heard to the applicant passed the order dated 16.11.2005 transferring the applicant from CJIL Agra to RMRCT Jabalpur. It is most relevant to point out here that the respondent No. 3 has no jurisdiction and no power exercised by him to transfer the applicant.

- i. The applicant is unmarried lady and has achieved milestones in her career and has to do the work of global/national importance and she must have global interest to remove HIV/AIDS may achieve the high grade spirit in medical Science.
- j. The appointing authority of the applicant is Director General ICMR, which it appears has not passed the order. The applicant was already holding the post at Jabalpur and she was on her own personal request due to the aforesaid problem of mother and father shifted at Agra, further transfer in mid session at tribal, Jabalpur itself proves the malafide intention of the respondents merely to save themselves from their own misconduct and to save from the corruption made by them towards the mistilisation of the public money.

As in highlighted portion of the OA.

4. Brief version of the respondents including the respondent No. 4 is as under:-


- a. The application filed by the applicant is totally misconceived, wrong and denied. The transfer order is in administrative exigency. The applicant being Assistant Director is working on the transferable post.
- b. The Director General of ICMR has decided to transfer the applicant, who was working as Assistant Director at Agra to RMRCT, Jabalpur along with the post. The Director General is competent to transfer the applicant more so alongwith the post.
- c. The applicant has been transferred alongwith the post, no prejudice has been caused to

the applicant. All her service conditions like pay, designation, etc. would continue to remain the same even at Jabalpur.

- d. The grounds taken by the applicant are totally denied being without any merit.
- e. The respondents' are well supported by the judgment of the Hon'ble High Court of Madras dated 24.09.2004 in W.O. No. 23273 of 2004 and W.P.M.P. No. 28162 of 2004, wherein the Hon'ble Court has up-held the power of the Director General, ICMR, to transfer a Research Cadre employee alongwith the post to any Institute of the ICMR within the country.
- f. Dr. Qamra wrote to DG, ICMR and based on her complaint dated 27.01.2005, an enquiry committee under Lt. Gen. D. Reghunath was constituted, Director General (respondent No. 2) has taken a decision to transfer Dr. Qamra to Jabalpur as a follow-up of the report of the committee.
- g. The parents Dr. Qamra have been staying at Chandigarh and she has been given permission/leave whenever she has requested for this purpose.

As highlighted in the counter and affidavit.

5. Rejoinder to the counter is as under: -

- a. The respondent No. 4 had a personal bias against the applicant.
 - b. The respondents have joined hands and gloves with each other in the design against humanity.
 - c. Knowing fully well that time granted by NACO is till December 2005 and therefore respondents knew that till then the applicant will be debarred from staff, vehicle and stationery and so on.
 - d. Transfer in general condition and the transfer with biased and malafide intention to kill the HIV/AIDS project are entirely on different footing and this difference has to be well understood while examining the application of the petitioner.
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As given in the rejoinder (highlighted portion)

6. As certain fundamental questions were to be got clarified as contained in order dated 29th December, 2005, the respondents had been directed to produce the relevant records also for perusal and religiously the same had been produced and we had gone through the same.

7. The counsel for the applicant laid stress on the following four points: -

- (a) The order impugned is accentuated by malafide.
- (b) The authority which passed the order has no legal competence to transfer the applicant alongwith the post.
- (c) The enquiry conducted by a one man enquiry committee is eyewash.
- (d) The transfer is otherwise also illegal.

8. The counsel for the applicant relied upon the following judgments:-

- (a) 1985(2) SLR 16, *Achyutananda Behera Vs. State of Orissa and others*
- (b) 1979(1) SLR 309, *P. Pushpakaran Vs. The Chairman Coir Board, Cochin and another.*
- (c) 1980 (1) SLR 310, *C. Ramanathan Vs. Acting Zonal Manager, Food Corporation of India, Mount Road, Madras and others.*
- (d) 1993(5) SLR 220, *A.K. Chakraborty Vs. New Bank of India & Others.*
- (e) 1957 Allahabad 70 (AIR V 44 C 14 Jan.), *sangam Lal Dubey vs. Director of Education, UP Allahabad and another.*

9. The counsel for the respondents on the other hand has stated that the preliminary investigation report submitted by none else than a very senior officer Lt. Gen. Raghunath, a retired DGAFMS would go to show that the applicant was given full opportunity and his was a dispassionate report and the Director General has considered the case very carefully and the decision to post the applicant with the post is fully justified and the same is in public interest.

10. The counsel for the respondents has relied upon the following judgments:-

- (a) *Union of India and others Vs. S.L. Abbas, AIR 1993 SC 2444*
- (b) *Judgment dated 24.09.21004 of Hon'ble High Court of Madras in WP 23273 of 2004*
- (c) *(1989) 2 scc 602 Gujrat Electricity Board and another Vs. Atmaram Sungomal Poshani.*
- (d) *(2006) (1) ESC 40 (All) Gulzar Singh U.P. and others.*

11. For the purpose of our consideration, the relevant report and the decision to transfer the applicant as found in the records are reproduced below:-

(a) Report of Lt. Gen. Raghunath

"Report of "One Man Committee" to examine the complaints of Dr. Qamra, Asst Director CJIL Agra held on 5th and 6th July 2005 has been sent by Lt. Gen. D. Raghunath. The finding of enquiry are as follows:-

- a. Dr. Qamra was indicted in the ICMR research cadre on 30th Oct 1984.
- b. She was appointed as RO in RMRCT Jabalpur.

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- c. She was promoted as SRO and thereafter AD. She became AD on 30th Oct 96, 12 years after joining the ICMR Research cadre.
- d. She was conflict with Dir RMRCT and successive directors in CJIL Agra.
- e. She has only two publications in peer received journals based on work done in ICMR institutions she has served.
- f. She has not submitted acceptable accurate progress reports on the NACO project on schedule tribes in Agra Commissionerate.
- g. She has not managed to keep her term together. There has been heavy turnover in her project staff.
- h. She has not shown a capability of working in a team and as a part of the institute.

Gen. Raghunath has finally suggested that since Dr. Qamra is now nearly 55 years old (DOB 25.08.50) she is unlikely to change her method of working and contribute useful research results in the remaining portion of her career.

The above was discussed with DG. He has suggested that we may give Dr. Qamra some more chance. However, to avoid strained relationship with Director, CJIL and to avoid uneasiness, we may transfer Dr. S.R. Qamara to RMRTC Jabalpur. Where she has worked earlier and conversant with the place and the director under whom she has worked earlier and had differences has superannuate."

(b) Decision on the basis of the above report.

"Report of a one man inquiry into a complaint filed by Dr. (Ms.) S.R. Qamra, Asstt Director, Central JALMA Institute for Leprosy, Agra against the Director CJIL,
Dr. V.M. Katoch

Inquiry conducted by Lt. Gen (Retd.) D. Raghunath in terms of ICMR letter No. D.O. No. 67/2/2003-ECD-1 dated 25.02.2005.

Date of Inquiry: 05 and 06 July 2005.

Basis of Investigation: Complaint of Dr. S.R. Qamra to Dr. N.K. Ganguly, Director General ICMR.



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The main complaints are dealt with below:

a. Sabotage of NACO founded project:

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b. Depriving of workable atmosphere, facilities and thus promotions:

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c. Harassment and humiliations to an unmarried female officer:


.....
d. Non implementation of GOI orders than depriving.....Long due benefits:

.....
FINDINGS:-

- a. Dr. Qamra was inducted into the ICMR research Cadre on 30th October 1984.
- b. She was appointed as RO in RMRCT Jabalpur.
- c. She was promoted as SRO and thereafter as Assistant Director. She became Assistant Director 30th October 1996, 12 years after joining the ICMR Research Cadre.
- d. She was in conflict with the Director, RMRCT and successive Directors in CJIL.
- e. She has only two publications in peer reviewed journals based on work done in ICMR institutions she has served.
- f. She has not submitted acceptable accurate progress reports on the NACO project on scheduled tribes in Agra Commissionerate.
- g. She has not managed to keep her team together. There has been a heavy turnover in her project staff.
- h. She has not shown a capability of working in a team and as a part of the institute.

OPINION:-

Dr. (Ms.) S.R. Qamra is now nearly 55 years old (Date of Birth 25.08.1950). She is unlikely to change her method of working and contribute useful research results in the remaining portion of her career.

 The relation between Dr. Qamra and her Director is strained and would remain uneasy. This would have a negative influence on the Staff relations in the Institute.

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Administrative action to remedy the situation is required. This may be taken up expeditiously."

12. The question is what are the powers of the authorities to effect transfer and whether the aforesaid order the Director General is vitiated on the ground that the same is punitive?

13. As regards the employer's powers to effect transfer, the Apex Court has in some of the recent cases has held as under:-

(a) **Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey, (2004) 12 SCC 299**

4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see *Abani Kanta Ray v. State of Orissa*. Unless the order of transfer is visited by malafide or is made in violation of operative guidelines, the court cannot interfere with it (see *Union of India v. S.L. Abbas*). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In *Union of India v. Janardhan Debanath* it was observed as follows: (SCC p. 250, para 9)

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an

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incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan*."

(b) State of U.P. v. Siya Ram, (2004) 7 SCC 405, at page 407:

Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan*.

(c) Union of India v. Janardhan Debanath, (2004) 4 SCC 245, at page 252 :

14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of

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an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.

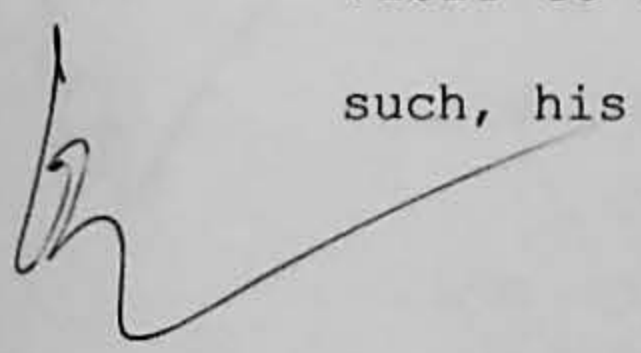
14. The above rulings have clearly spelt out that when the authority considering the exigency of administration effects a transfer, the same, save on grounds of malafide or the transfer being against professed norms cannot be easily interfered with.

15. In view of the above, we have to confine ourselves within the constricted circle of judicial review in respect of the transfer of the applicant.

16. During the course of arguments, the counsel for the applicant stressed that apart from the fact that the inquiry conducted by the Lt. Gen. is a farce; in case the Director General had decided to ensure that



the present Director and the applicant be not posted in one and the same place, it is the Director who ought to have been transferred as the complaint made was by the applicant and against the Director. The applicant, who was present in the Court supplemented (of course with the permission of the Court and at the request of the counsel) the submissions made by her counsel and stated that the project where she is serving cannot be closed and that other than the applicant none would be in a position to continue the project. Though the project was to come to an end by 31-12-2005, with her recommendations for continuance, the same would have been allowed by the NACO. It has also been submitted that the present Director did not allow the applicant to submit the report on time and at all times and at all possible stages, the Director saw to it that the project did not progress. It is on account of such an attitude of the Director that the project could not be completed within the time allowed. It has further been stated by the applicant that the earlier Director at Jabalpur had harassed applicant and hence the applicant was to seek a transfer from Jabalpur and as such, there is no point in being posted to Jabalpur. As regards the inquiry the applicant added that the inquiring authority did not hear the applicant and he remained throughout his visit to Agra with the complaine (Director) and as such, his report cannot be relied upon.



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17. The complaint is against the Director and an inquiry committee was appointed. The senior officer who had conducted the inquiry had furnished the report extract of which is as contained above. It would be seen from the said report that the inquiry report is thoroughly balanced. That the inquiring authority stayed with the Director, the complainee etc., is all too much to allege. No fault can be found in the inquiry committee being with the Director. For, when the Director is the Head of the organization at Agra, the inquiry authority has to interact with the Director. The report as extracted above nowhere reflects that the Committee had gone one-sided and all the relevant aspects were taken into account. No lacuna, therefore, can be discerned out over the report.

18. As to the consideration of the entire matter by the Director General, it could be seen that for administrative reasons, the D.G. had decided that the applicant and the Director be not posted in the same place and taking into account the circumstances of the case the D.G. had decided to shift the applicant from Agra. Now, the next question is where to post the applicant. Here exactly lies the full application of mind of the D.G. and his sympathy in effecting the transfer to Jabalpur. Considering the fact that Jabalpur is a place

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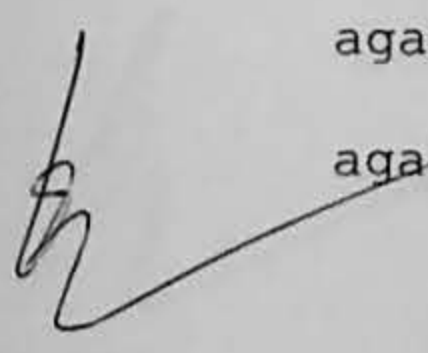
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familiar to the applicant, the D.G. has posted her at Jabalpur, and he has also recorded that in so posting, there would not be any harassment to the applicant from the Director at Jabalpur as the earlier incumbent is no longer there.

19. Thus, we find that the report of the Inquiry Committee is dispassionate and the decision of the Director General is compassionate (towards the applicant).

20. According to the applicant, the Director at Jabalpur was against her, the Director at Agra was against her; the inquiry authority was against her and the Director General was against her and all have grouped together to mar the career prospects of the applicant! Incredible.

21. For the submission by the counsel for the applicant that in case the D.G. had decided not to keep the applicant and the Director in the same place, he could have transferred the Director as it is the applicant who has made the complaint against the Director and as such, it is the Director who ought to be transferred, the same would have held good had the report of the Inquiry Committee gone against the Director. In fact the same is not against the Director, but impliedly the report shows



that the complaint is frivolous and vexatious. Hence, Director General has rightly decided to transfer the applicant.

22. Whether the transfer is punitive is the next question. An order is punitive if a misconduct is the foundation for that order, while if the misconduct is only motive then the order is not punitive. (*Parshotam Lal Dhingra v. Union of India, 1958 SCR 828*) For, in order that an order is punitive, then it may have to entail certain penal consequences such as loss of emoluments or seniority or the like. The Apex Court has in the case of P.L. Dhingra has held, "Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty."

23. In the instant case, there is no question of the order being held to be punitive as there was no inquiry held against the applicant and it was only

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to investigate into the existence of truth or otherwise in the complaint preferred by the applicant and the inquiry authority having held that none of the allegations made by the applicant against the Director was found to be true, the order cannot be held punitive. Nothing less; nothing else. The purpose of the enquiry was not to find out if the applicant was guilty of any misconduct, negligence, inefficiency or other disqualification. As such, the transfer effected has to be termed purely as on administrative grounds and the same having been passed by the competent authority, no legal infirmity could be discerned from the impugned order.

24. The next question is as to what public interest would be served in transferring the applicant with the post. The D.G. has the power to effect transfer of the applicant. So much so, he has the power to transfer the post also for administrative reasons. Perhaps he may not have any power to create a post but has every right to reshuffle the existing posts. It is not that the post of the applicant is fixed only at Agra. Earlier the applicant was serving at Jabalpur. Again, the project has come to an end by 31-12-2005 and this is the admitted position. And according to the respondents, the very project at Agra wherein the applicant was posted has already



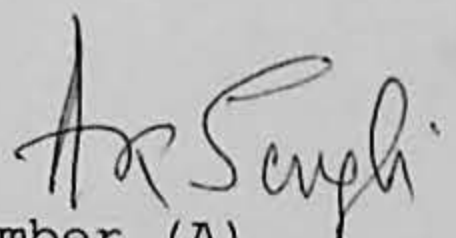
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come to an end. Hence, public interest aspect is fully met with in the action of the respondents.

25. Thus, viewed from any angle, no legal lacuna in the impugned transfer order could be seen. The applicant has miserably failed in making out her case. The OA thus, being devoid of merits, merits only dismissal and we accordingly order so.

26. However, we feel that the period from the date of transfer order till the date the applicant joins the post at Jabalpur shall have to be regularized by the respondents by way of grant of leave if any available at the credit of the applicant, subject to the applicant's applying for the same within one month from the date of her joining the post at Jabalpur.

27. Under the circumstances, no cost.


Member (A)


Member (J)

/pc/