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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1560 of 2005.

Allahabad, this the 26th day of April, 2006.

Hon'ble Mr. A.K. Singh, Member (A)

Dr. Jay G. Varshney,
Aged about 55 years,
Son of Late Bihari Lal,
Resident of M.I.G.,-113,
Indira Nagar,
District - Kanpur.

...Applicant.

(By Advocate : Shri Nikhil Kumar)

Versus

1. The President, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi.
2. Indian Council of Agricultural Research, Ministry of Agriculture & Co-operation, Government of India, Krishi Bhawan, New Delhi, 110001 through its Director General.
3. The Director, Indian Institute of Pulses Research, Kalyanpur, Kanpur.
4. Dr. Masood Ali, H-434 A, Satyam Vihar, Awas Vikas Colony No.1, Kalyanpur, Kanpur.

....Respondents.

(By Advocate : Shri B.B.Sirohi
Shri N.P.Singh.

O R D E R

OA No.1560 of 2005 has been filed by the applicant Jay G. Varshney (of the address given in the notice) against order F. No.15-2/05-per.II dated 19th October, 2005 and corrigendum dated October 25, 2005 by which the applicant has been transferred from Indian Institute of Pulses

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Research, Kanpur to Indian Grassland & Fodder Research Institute, Jhansi.

2. Brief facts of the case are that the applicant at present is working as Principal Scientist in Indian Institute of Pulses Research Kanpur. As a Scientist the applicant has put in 33 years of service, which include 23 years as a Principal Scientist. He is also the senior most Principal Scientist in the aforesaid Institute and had held important offices in the same discipline at Pusa, Shillong and Gwalior. Applicant has alleged that the present Director of Indian Institute of Pulses Research, Kanpur Dr. Masood Ahmed who is senior to the applicant by a few weeks and is also a Scientist in the same discipline i.e. agronomy, is now heading the department of agronomy. Due to professional rivalries and jealousies the said Dr. Masood Ahmed, respondent No.4, has neglected, humiliated and harassed the applicant in a number of ways on taking over as Director of Institute in 1999 and has been misusing his powers to further humiliate and harass him. When Respondent No.4, was elevated to the position of Director of the aforesaid Institute, the applicant being the senior most Scientist should have been considered for holding the charge of chick pea coordinator, i.e. in the resultant vacancy created as a result of elevation of respondent No.4 but instead of giving him charge, respondent No.4 handed over the charge of the aforesaid post to one Dr. R.P.Dua, who was almost 18 years junior to him (i.e. the applicant).

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He was similarly discriminated and ignored when the post of Head, Division of crop production was created, at the instance of respondent No.4 and a person, 16 years junior to him, was appointed controlling officer of the applicant.

3. Besides, the above, the respondent No.4 has also not extended full Research Assistance facilities to the applicant by providing adequate Staff support, to facilitate his day to day research work. The applicant was also not allowed to attend and present papers in the national as well as International Conferences where many scientists of a junior level were deputed ignoring his just claim as he was the senior most scientist in the Institute. Not only this, the respondents No.4, also created hindrances in forwarding the Research papers of the applicant for publication without assigning any valid reasons. The applicant, in consequence, sent 15 representations to Authorities in the Indian Council of Agricultural Research, stating clearly therein his grievances against respondent NO.4, but the same virtually were turned to deaf ears by the authorities. Of late the applicant had been working on a project entitled 'long term effect of herbicides application on weed infestation and seed yield in prominent cropping systems' from 2003 to 2008. The applicants states that he has already worked for almost 2 years on this project and if he is transferred in the middle of the project, his two years research achievement in this field is bound to go in waste. There is

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also no other scientist in the institute who can work on this project and hence it would be difficult to complete the project, on schedule. Moreover, there were many other scientists in the same discipline, who could have been considered for a posting to Indian Grassland and Fodder Research Institute, Jhansi as they had put in longer years of service in the Indian Institute of Pulses Research, Kanpur than the applicant. Infact, the transfer order of the applicant, which is being assailed in the O.A., is based on extraneous considerations and on the recommendations of respondent NO.4 and not on the basis of any administrative exigency or public interest and hence the same is bad in law. Accordingly, the applicant prays the following relief(s):-

- (i) To issue a writ or direction in nature of certiorari quashing the impugned office order F. No. 15-2/05 per II dated 19th of October 1995 and corrigendum dated 25.10.2005.
- (ii) To issue a writ or direction in the nature of mandamus directing the respondent No.1, namely President, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi to conduct an impartial inquiry conducted by C.V.C. against respondent No.4 for alleged harassment of the applicant as well as causing damage to his professional career.
- (iii) To issue writ or direction in the nature of mandamus to grant suitable compensation for harassment, humiliation, mental torture and causing damage to the professional career of the applicant.

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- (iv) To issue such other direction in the nature of mandamus to the respondents to cancel the appointments of Head, Deptt. Of Crop Production IIPR, Kanpur filled on the basis of interview held on 31.7.2005.

5. Respondents on their part have opposed the O.A. in question, on the following grounds:-

- {1} The applicant has been transferred from Indian Institute of Pulses Research, Kanpur to Indian Grassland and Fodder Research Institute, Jhansi, in accordance with criteria 1A of the Transfer policy which provides for correction of imbalances.
- {2} The applicant has an All India Transfer liability and can be transferred anywhere in India where the ICAR Institute is located.
- {3} The applicant is the senior most Principal Scientist in the discipline and has completed a continuous stay of 18 years of service in the Institute. The transfer order in question is, therefore, fully in accordance with the transfer guidelines.
- {4} The transfer order has been issued to the aforesaid institute at Jhansi keeping in view the expertise of the applicant in the job as the Institute in question is the biggest Institute in Research of Fodder, Grass and weeds. The expertise of the applicant can be fully exploited or utilised there. Hence, the transfer of the applicant is clearly in public interest.
- {5} The applicant has failed to establish any malafide against the transferring authority namely Director General, I.C.A.R, New Delhi and hence the order in question can not be challenged

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on the basis of any malafide or prejudice against the applicant on the part of the competent authority.

- {6} The applicant's plea that the transfer order in question will have an adverse impact on the project entitled "Long term effect of herbicides application on weed infestation and seed yield in prominent cropping systems", is not relevant to the issue inasmuch as another scientist, in the same discipline, could be engaged to continue the project work, in case the same is considered necessary, by making internal arrangements.

6. The respondents rely on a judgment of Hon'ble Supreme Court in the case of Union of India Vs. S.L. Abbas (1993) 4 SCC 357, wherein the Apex Court has held that an order of transfer is an incident of Government service and "who should be transferred where, is a matter for the appropriate authority to decide".

7. Respondents also submit that postings and transfers of scientists and their Administrative as well as Supervisory control is with Director General, I.C.A.R, New Delhi.

Detailed guidelines to regulate the transfer and postings of Scientists under ICAR were issued on 17.11.1980 with the approval of competent authorities.

Guideline 1 of the aforesaid transfer policy lays down:-



"(i) **Criteria:** The transfer of scientists will be made:-

- (a) to correct imbalance in the cadre strength of Scientists in various disciplines at different institutes, and also within an Institute including regional stations.
- (b) To fill positions in high priority projects where direct recruitment through agricultural scientists Recruitment Board may result in delay in the implementation of programmes.
- (c) To utilize the experience of Scientists in appropriate fields.
- (d) To post Scientists in backward or comparatively less developed areas in accordance with the provisions of Rule 20 (2) of the ARS Rules.
- (e) For administrative reasons.

2. **CATEGORISATION OF STATIONS**

The stations in which the ICAR Institutes and centres are located have been categorised as (i) 'A' 'B' (ii) 'C' (iii) 'D' and 'E'. For purposes of transfer A & B will form one group 'C' in second group and D & E in the third group.

3. **TENURE OF POSTING:**

The tenure of posting will normally be five years in the first group, four years in the second group and three years in the third group. The Scientist on completion of tenure of five years in the first group will be transferred to the third group and on completion of three years tenure in that group to the Second group and then to the first group and so on.....".

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8. From the above guidelines, it clearly follows that a scientist is liable to transfer to any place in India and his normal tenure normally shall be five years in Group A & B (Stations), Four years in Group 'C' Station and three years in Group 'D' & 'E' stations. If we apply the above guideline in case of the applicant, I find that he does not have any case on merits. He himself has admitted in point 4 (2) of the OA.

- (i) Brief facts of the case that the "applicant is the senior most Principal Scientist in the Institute of Pulses Research, Kanpur". Respondents 1, 2 and 3 in para 10 of their counter affidavit have affirmed that he applicant was transferred and posted to Directorate of Pulses Research (DPR), Kanpur on 19.10.1987 and he had already completed over 18 years service at the aforesaid station. Hence, the transfer order in question is fully in accordance with criteria No.3 of the aforesaid guidelines, as discussed above.
- (ii) As regards the main objection raised by the applicant that the transfer order in question suffers from malafides on the part of respondent NO.4, it may be clarified that respondent NO.4, is neither the competent authority to issue transfer order in respect of a Principal Scientist nor he has issued the same. The transfer order in question has been under orders from the competent authority namely Director General, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi. No malafides have been alleged by the applicant against him. The Director General, I.C.A.R is the Apex Authority, who by virtue of his high office is supported to

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be in impartial, dispassionate, neutral, objective, and fair. There can, therefore, be no question of imputing any motives to him in the matter. Hence the allegations of any malafide in the issue of transfer order does not stand the test of judicial scrutiny.

9. If the applicant was aggrieved by the aforesaid order, it was open to him to approach the authority in question with his grievances, if any, and this court believes that the competent authority would have certainly considered the same. Instead of approaching him, the applicant has chosen to file an O.A. before this Tribunal, bye-passing the competent authority, which violates in Section 20 of the Administrative Tribunals Act 1985 which clearly provides that an application under Section 19 can be entertained by the Tribunal only after the applicant has exhausted the departmental remedies available to him under the statute.

10. Hon'ble Supreme Court in the case of Gujarat Electricity Board Vs. A.R. Sungomal Poshari {reported in AIR 1989 SC 1433} has held as under:-

"Transfer from one place is generally a condition of service whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the transfer order is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer....."

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In view of these observations of the Apex Court, the petition filed by the applicant, without exhausting the departmental remedies available to them, is clearly liable to rejection under section 20 of the Administrative Tribunals Act, 1985.

11. The third important argument advanced by the applicant that the aforesaid transfer order will have an adverse impact on his on going project entitled "long term effect of herbicides application on weed infestation and seed yield in prominent cropping systems" respondents contest the argument of the applicant on the following grounds:-

"(1) Another Scientist in the same discipline will be engaged to continue project work by making internal arrangement, if the project in question, on review is found feasible and beneficial."

12. Moreover, the respondents point out that working contingency of this project is only Rs.50,000 to Rs.70,000/- per year. The remaining amount shown in the budget product is the "projected salary of the Scientists and Technical Personnel involved in the project, which is hardly of any significance". Respondents have also averred in para 24 of their counter affidavit dated 4.1.2006. "The Research Advisory Committee recommended that the experiments conducted under this project should be abandoned as chic pea crop was extremely poor". They have also enclosed a photo copy of the IVth Research Advisory

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Committee proceedings dated 11/12.3.2004 marked as "Annexure CA- XVI" to their counter affidavit dated 4.1.2006. Respondents have further affirmed, in para 24 of the aforesaid counter affidavit.

"Thus the Research data of 2003-04 were of no-consequence and the efforts made under this project had gone waste. During 2004-05, the effect of weed treatment in Kharif rice did not show any effect probably due to improper execution of the Trials by the applicant (Dr. J.G. Varshney)....."

"Thus the efforts of last two years under the Project did not headway anywhere. The kind of observations taken by the applicant (Dr. J.G. Varshney) under the project is of routine nature which any agronomist can accomplish. Since the efforts of last two years have gone waste, STAFF RESEARCH COUNCIL will take a view whether to continue this project or not".

13. In view of positive recommendations of the Research Advisory Committee to abandon the Project in view of lack of success in 'pursuing the same, as discussed above, the project in question, in all likelihood was not likely to be pursued and even if a decision was taken by the staff Research Council to continue the same, the respondents will be in a position to provide for the services of another Scientist in the same discipline to complete the same.

14. In view of the above, I find that none of the arguments advanced by the applicant in support of their case can be taken as convincing and acceptable in the circumstances of this case. The applicant clearly has not

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(21)

been able to establish any case either on grounds of malafides or any other ground.

15. The respondents have further submitted in their written brief of arguments dated 14.3.2006 that they have only tried to correct the imbalances. According to the criteria 1 (A) of the Revised transfer guidelines which came into effect w.e.f. 17.11.1980 "The transfer of a scientist will be made (a) to correct imbalance in the cadre strength of scientists in various disciplines at different institutes, and also within an Institute including regional stations". Respondents submit in para 9 of their written brief that the applicant has been transferred from IIPR Kanpur to IGRI Jhansi where 2 clear sanctioned posts of Principal Scientist (Agronomy) were available. Moreover the posting of the applicant to IGRI Jhansi, has also been done with the sole objective of exploiting his expertise and potential in the job and to make full use of the same at the relevant station.

16. In view of the above, it is clearly established that the transfer order in question bearing No. F. NO. 15-2/05-per II dated 19th October 2005 as well as corrigendum dated 25.10.2005, were issued with the approval of the competent authority i.e. Director General ICAR, New Delhi and in accordance with the existing instructions on the subject. The allegations of malafide in the issue of transfer order also do not hold water as discussed above. It is also

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abundantly clear on record that the applicant has not been able to establish his case either on the basis of facts or even as per law. Hon'ble Supreme Court in the case of Union of India Vs. S.L. Abbas {Reported in 1993 (2) SLR 585 SC} has observed [as per para 5.4 of the judgment:]-

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer the appropriate authority must consider the same having regard to the exigencies of administration....."

17. The Apex Court has reiterated the same principles in the case of State of Rajasthan Vs. Anand Prakash Solanki {Reported in 2003 (7) SCC 403} wherein their Lordships of the Supreme Court held:-

".....Transfer is an incidence of public service and the power to transfer is available to be exercised by the employer unless an express bar or restraint on the exercise of such power can be spelt out. The power like all other administrative powers, has to be exercised bonafide....."

Hon'ble Supreme Court has reiterated the same principles in the case of E.P Royappa Vs. State of Tamilnadu {Reported in AIR (1974) SC 555} and Mrs. Shilpi Bose and another Vs. State of Bihar and others {Reported in AIR (1991) SC 53}.

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18. In E.P. Royappa Vs. State of Tamilnadu, their Lordships of Supreme Court held "It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and the appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilize the services of its employees. However, this power must be exercised honestly bonafide and reasonably".

19. Similarly in the case of Mrs. Shilpi Bose and others Vs. State of Bihar, their Lordship of the Supreme Court observed:....."A Government servant holding a transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred from one place to another. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions/orders, the Court ordinarily should not interfere with the order. Instead, affected party should approach the higher authorities in the department. If the Courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects while interfering with the transfer orders....."

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20. In view of the above dictum enunciated of the Apex Court and also in view of the fact the applicant has not been able to establish any illegality or malafide on the part of competent authority in issue of the order in question. The OA in question clearly fails and all points and merits dismissal.

21. But irrespective of the above findings, I may like to remind the respondents that heavy responsibility devolves on their shoulders to shape the future of such eminent class of intellectuals as the Scientists who, no doubt, are the most valuable assets of this country. Knowledge, acquired by Intellectual pursuit, has always been cherished as the most precious wealth, a person can possess, as per our ancient traditions. This wealth can neither be stolen by a thief, nor can be divided among the kin, nor can even be grabbed by the State and when distributed, instead of decaying or decreasing it goes on increasing in volumes and therefore intellectuals/scientists and other men of letters have always been respected by the society and the state:-

"न चौर हार्यम्, न भ्रातृभाज्यम्
न राज हार्यम्, न च भार कारि।
व्यये कृते वर्धति एवं नित्यम्
विद्या-धनं सर्वधनं प्रधानम्॥"

It is also said that while an intellectual is venerated every where, a king is venerated only in his own kingdom.

"स्वदेशे पूज्यते राजा

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विद्वान सर्वत्र पूज्यते।"

Even State and the kings themselves venerate scholars/
men of letters-

"विद्या राजसु
पूज्यते न हिर्घनम्
विधा गुरुणाम् गुरुः"

In this background, therefore, it is tragedy that a scientist has to come all the way and knock the door of this Court to seek justice. This is indicative of a degree of failure in the system in providing security and satisfaction to a scientist who is continuously engaged in academic pursuits with the avowed objective of enhancement of material prosperity of the nation. A court will not normally like to interfere with the decisions of an administrative authority, if the same is issued in accordance with the law. Courts regard law as an embodiment of all wisdom. A Court has to base its findings on the facts as they come on record. But there may be other facts which may not meet the eye. In such a situation, it would be magnanimous on the part of the respondents, specially respondent No.1 and the Govt. of India to have a fresh look into the matter if possible and to devise a system which apart from ensuring justice, ensures contentment and satisfaction to the large community of scientists, who are relentlessly working for the economic and scientific upliftment of the country and for raising the living standards of our people.

22. With these observations, the O.A. 1560 of 2005 is dismissed. No order as to costs.

A Singh
Member A
26/4/06

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