



O.A. 350 / 370/2019

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

Priyabrata Chattopadhyay, Son of Late Phatik Chandra Chattopadhyay, aged about 40 years, working as Scientist GR-IV(2), CSIR-CMERI under the overall control of the Director General, CSIR, at present residing at Ananda Bhawan, 2nd Floor, Post - Ushagram, Asansol, District West Bardhaman, Pin - 713303.

Applicant

- Vs -

1. Union of India through, the Secretary,
Ministry of Science and Technology,
Department of Science and Technology,
Government of India, Technology Bhavan,
New Mehrauli Road, New Delhi-110016.
2. Joint Secretary,
Ministry of Science and Technology,
Council of Scientific and Industrial Research (CSIR)
Anusandhan Bhawan
2, Rafi Ahmed Kidwai Marg, New Delhi - 110001.
3. Director General,
Council of Scientific and Industrial Research (CSIR)
Anusandhan Bhawan
2, Rafi Ahmed Kidwai Marg, New Delhi - 110001.
4. Director,
Central Mechanical Engineering Research Institute (CMERI)
Council of Scientific and Industrial Research (CSIR)
M. G. Avenue, Durgapur - 713209.
5. Administrative Officer,
CSIR-Central Mechanical Engineering Research Institute,



M. G. Avenue, Durgapur - 713209.

6. Scientist-in-charge,

CSIR-CMERI Centre of Excellence for Farm Machinery (CoEFM)

Opp. GNE College, Gill Road,

Ludhiana-141006 (Punjab)

.. Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O.A.350/370/2019

11.9.21,
Date of order : 16.03.2021

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

PRIYABRATA CHATTOPADHYAY

VS.

UNION OF INDIA & OTHERS

For the applicant : Mr. C. Sinha, counsel

For the Respondents : Mr. B. Bhushan, counsel

ORDER

Bidisha Banerjee, Judicial Member

Heard Id. counsels.

2. The applicant inter alia has assailed a transfer order dated 24.02.2018 (Annexure A/5 to the O.A.) together with a release order dated 05.03.2018 (Annexure A/7 to the O.A.) and the order rejecting his representation against the order of his transfer.

3. The applicant has preferred this O.A. to seek the following reliefs:-

"a) To set aside and quash impugned Office Memorandum No.4-Admn.i(742)/10-E dated 24.02.2018 issued by the Administrative Officer, CSIR-Central Mechanical Engineering Research Institute, Durgapur;

b) To set aside and quash impugned Office Memorandum No. No.4-Admn.i(742)/10-E dated 01.03.2018 issued by the Administrative Officer, CSIR-Central Mechanical Engineering Research Institute, Durgapur;

- c) To set aside and quash impugned Office Memorandum No. 4-Admn.i(742)/10-E dated 05.03.2018 issued by the Administrative Officer, CSIR-Central Mechanical Engineering Research Institute, Durgapur;
- d) To set aside and quash impugned Office Memorandum No. Misc./2018-AO Sec dated 05.03.2018 issued by the Administrative Officer, CSIR-Central Mechanical Engineering Research Institute, Durgapur;
- e) To set aside and quash impugned Office Memorandum Nos. Misc./2018-AO Sec dated 23.04.2018, 15.05.2018 and 18.05.2018 issued by the Administrative Officer, CSIR-Central Mechanical Engineering Research Institute, Durgapur;
- f) To set aside and quash impugned O.M. dated 07.07.2017, 06.08.2018, 03.10.2018 and letters dated 14.07.2018, 31.07.2018;
- g) To set aside and quash impugned letter dated 18.01.2019 issued by the Administrative Officer, CSIR-CMERI;
- h) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

4. The applicant has averred that he was appointed vide order dated 04.01.2010(Annexure A/1 to the O.A.) as Scientist Gr.IV(1) in P.B.-3 with Grade Pay of Rs.5400/- by way of direct recruitment in the Central Mechanical Engineering Research Institute (CMERI) with the qualification as specified under the CSIR, Scientist Recruitment & Assessment Promotion Rules, 2001(Annexure A/20 to the O.A.). Para 2 of his appointment letter reads as under:-

"2. You will be liable for transfer to any of the Laboratories/Institute of the council anywhere in India."

According to the applicant, Para 2 of his appointment letter implies that the transfer liability of the applicant is restricted to any Laboratory/Institute of the Council anywhere in India whereas the transfer order dated 14.02.2018 reveals that he has been transferred to Center of Excellence in Farm Machinery(COEFM), which is against the

transfer liability as spelt out in the appointment letter. Relevant portion of the transfer order dated 24.02.2018 reads as under:-

"He will look after the activity of the center such as CAD/CAM and manufacturing technology related to agricultural machinery...."

The applicant would further submit that his transfer to Center of Excellence in Farm Machinery from Central Mechanical Engineering Research Institute would result in mis-utilisation of his expertise as Mechanical Engineer and against the recruitment qualifications prescribed.

5. The applicant would further allege that the order of transfer has not been routed through a Placement Committee thereby violating the mandate of Hon'ble Supreme Court in **T.S.R. Subramanian and others vs. Union of India & Others [(2013)15 SCC 732]**.

6. At hearing, learned counsel for the respondents would specifically admit absence of any existing transfer policy of the institute and that the decision to transfer the applicant has not been routed through a Placement Committee.

7. The applicant would further allege that the Director of CSIR-CMERI is not the competent authority to have issued the order of transfer in terms of Para 6.8 of the CSIR, Scientist Recruitment & Assessment Promotion Rules, 2001(Annexure A/20 to the O.A.) inasmuch as the D.G., CSIR is empowered to transfer any scientist from one laboratory to another including their extension/field centers in



public interest and the transfer of the applicant to an altogether different organisational center is not in public interest.

8. The applicant has primarily challenged the transfer order as bad on the following grounds:-

(i) The said transfer order is illegal, arbitrary and malafide in nature as no placement committee in terms of the mandate of Hon'ble Apex Court in case of **TSR Subramanian & Ors. – Vs. – Union of India & Others reported in (2013) 15 SCC 732** was constituted;

(ii) The transfer is not in public interest but on the basis of a complaint lodged by the wife of the applicant;

(iii) By referring to para 6.8 of the CSIR Scientists Recruitment and Assessment Promotion Rules, 2001, the applicant has taken the ground that the transfer order has been issued with approval of the Director, CSIR-CMERI Durgapur and not with the approval of Director General, CSIR, therefore, the order of transfer stands void *ab initio*;

(iv) The applicant has referred to CSIR DO- 1/47/81/O&M dated 29.05.1991 from Dr. G.S. Sindhu, DGSIR;

(v) The applicant is a Mechanical Engineer but unfortunately he has been transferred to CMERI-COEFM, Ludhiana which is a Centre of Excellence for Farm Machinery where the expertise of applicant could not be utilized in proper prospective;



- (vi) Mother of the applicant is 78 years old, suffering from various ailments and is bedridden;
- (vii) The applicant is a high blood sugar patient.

9. Per contra the respondents would submit as under:-

Pursuant to the transfer order dated 24.02.2018 the applicant has been relieved from CSIR-CMERI, Durgapur to enable him to join at Ludhiana, by relieving OM dated 05.03.2018 and accordingly, the applicant has joined at Ludhiana on 19.03.2018 (**Annexure – A-7 and Annexure A-9**).



The applicant has given plethora of representations and all the representations have been disposed of by the competent authority with a reasoned order that transferring him back to CSIR- CMERI Durgapur could not be acceded to. His representations dated 17.05.2018, e-mail dated 06.08.2018 and 31.07.2018 regarding transfer from Ludhiana centre of CSIR-CMERI to three laboratories of CSIR i.e. CSIR- CIMFR, Dhanbad; CSIR-CGCRI, Kolkata and CSIR-NML, Jamshedpur could not be acceded to as those laboratories were not having any requirement of his services as his qualification and expertise would not match with the activities of aforesaid laboratories.

That after reporting his duty at Ludhiana on 19.03.2018 the applicant worked only for 10 days whereas his transfer to Ludhiana was made on the basis of job requirement to achieve the mandate of institutional interest in particular and public interest at large.

10. During the course of argument, this Tribunal on 09.12.2020 directed the Ld. Counsel for the respondents to take instructions on the following issues:

- i) Whether the decision in TSR Subramanian makes it mandatory for the authorities to get a transfer routed through a placement committee before effecting the transfer;
- ii) Whether the Director is the competent authority to issue the transfer order.

11. The respondents have responded that the transfer was an inter-lab transfer from Durgapur to Ludhiana, therefore, the Director is the competent authority to issue such transfer order.



Further that, the verdict of Hon'ble Apex Court in the case of **TSR Subramanian & Ors. –Vs. – Union of India & Ors.** is not applicable to this case as the said verdict is related to offices regulated by All India Service Rules and does not apply to the council servants, as the council employees are governed by Central Civil Services Rules as applicable in CSIR and/ or CSIR Rules. There is no provision for placement committee in CSIR to look into transfer matter.

Further that, as per Clause 6.8 of CSIR (CSRAP) Rules, all Scientists in the Council service shall be liable to serve anywhere in India or outside and that the DG, CSIR shall be empowered to transfer any Scientist from one laboratory to another including their extension/Field Centres in public interest. **Director of the Lab. shall be empowered to**

transfer any scientist from the Headquarters of the Lab/Institute to its extension/field centres and vice versa.

That, CSIR-CMERI-COEFM, Ludhiana is an extension/Field Centre of CSIR-CMERI, Durgapur and as per above said clause, the Director, CSIR-CMERI is empowered to transfer any Scientist from Headquarter of CSIR-CMERI, Durgapur to its extension/ field centre at Ludhiana and vice versa.

12. On the issue whether non-existence of a Placement Committee and the decision to transfer being not routed through a Placement Committee, was in clear violation of the mandate of Apex Court in **T.S.R. Subramanian and others vs. Union of India & Others** supra, we would note that relevant para of the said judgment reads as under:-

"34. We, therefore, direct the center, state governments and the union territories to constitute such Boards with high-ranking serving officers, who are specialists in their respective fields, within a period of three months, if not already constituted, till parliament brings a proper legislation in setting up CSB."

Vehemently opposing the contention of the applicant about applicability of the ratio of **T.S.R. Subramanian** the Id. counsel for respondents would submit that para 31 onwards of the Judgment has discussed about "safeguard civil servants in light of the political scenario" and the various administrative reforms but no where the Hon'ble Apex Court has mandated that a transfer in all ^{institutions} acquisitions have to be routed through a placement committee, hence, the ratio of the judgment cited by the applicant is not applicable.



13. The respondents have heavily relied upon the following judgments:-

(i) (2004) 12 SCC 299 **Kendriya Vidyalaya Sangathan –Vs.- Damodar Pandey** (para – 4), which contemplates that transfer is an incidence of service and is not to be interfered with by malafide or infraction of any prescribed norms. Who should be transferred and posted where is a matter for 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 court should not ordinarily interfere with it.

(ii) (2009) 11 SCC 678 **Tushar D Bhatt – Vs. – State of Gujarat** (para 16 and 17), which contemplates that the legal position has been crystallized in a number of judgments that transfer is an incidence of service and transfers are made according to administrative exigencies.

(iii) (2010) 13 SCC 306 **State of Haryana & Ors. –Vs. – Kashmair Singh & Anr.** (para 12 and 14) - The ratio of the judgment reiterates the mandate that transfer ordinarily is an incidence of service and the courts should not be very reluctant to interfere with transfer orders so long as they are not clearly illegal."

Therefore, the respondents would claim that the transfer of the applicant is in public interest, on the basis of man power requirement in the other lab/centre i.e. COFEM Ludhiana under CSIR-CMERI, Durgapur, issued by the competent authority, issued without any malice or any violation of rules and accordingly the applicant's ground to challenge the transfer order is not tenable and needs to be dismissed with cost.

14. We have considered the rival contentions and perused the materials on record and given our anxious consideration.

15. In T.S.R. Subramanian and others vs. Union of India & Others,
the Hon'ble Supreme Court records as under:-

"Some eminent retired civil servants filed the present writ petition under Article 32 of the Constitution for bringing about reforms as per recommendations of several committees and commissions for preservation of integrity, fearlessness and independence of civil servants at the Centre and State levels.

The three principal areas of reforms indicated in the reports of committees and commissions included: (a) constitution of the an independent Civil Service Board (CSB) having statutory character and similar boards at the State level for making recommendations on transfers to the political executive, (b) fixed tenure of civil servants for ensuring their stability and a protection mechanism of inquiry, adjudication and compensation to transferred officers, etc., against unreasonable premature transfers having no public interest, and (c) formal recording of all instructions/directions/orders/suggestions which he/she receives, not only from his/her administrative superiors but also from political authorities, legislators, commercial and business interests and other persons/quarters having interest, wielding influence or purporting to represent those in authority based on the principles recognised by Rules 3(3)(ii) and 3(3)(iii) of the All India Services (Conduct) Rules, 1968. The committees indicated that even if some States had set up an independent CSB, it was not satisfactory, not statutory and merely gave effect to wishes of the political executive. And that Central and State Civil Service Acts have to be enacted to confer statutory character on CSBs.

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In the present political scenario, the role of civil servants has become very complex and onerous. Often they have to take decisions which will have far-reaching consequences in the economic and technological fields. Their decisions must be transparent and must be in public interest. Many of the recommendations made by the Hota Committee, various reports of the Second Administrative Reforms Commission, 2008 and the Santhanam Committee Report have highlighted various lacunae in the present system which calls for serious attention by the political executive as well as the lawmakers. However, no positive direction can be given to constitute an independent CSB at the Centre and State level, without executive control, which the Hota Committee has recommended and that too, comprising of persons from outside the Government."

In such context supra, it was directed that :-

"The Centre, the State Governments and the Union Territories are, therefore, directed to constitute such Boards with high ranking serving officers, who are specialists in their respective fields, within a period of three months, if not already constituted, till Parliament brings in a proper legislation under Article 309 of the Constitution, in setting up CSB."



Where it is spelt out that all the Central Government departments are required to frame policies, issue guidelines to constitute transfer and placement committee which would henceforth order/approve transfer of its employees.

16. In Gujurat Electricity Board v. Atmaram Sungomal Poshani

[(1989)2 SCC 602], the Hon'ble Apex Court has observed as under:-

"4.....Transfer from one place to other is necessary in public interest and efficiency in the public administration. 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 order of transfer is not stayed, modified or cancelled the public servant concerned must carry out the order of transfer."



17. In Mithilesh Singh v. Union of India [(2003)3 SCC 309], the

settled legal position has been reiterated. The Court held that absence from duty without proper intimation is indicated to be a grave offence warranting removal from service.

18. In State of Haryana & Others vs. Kashmir Singh and Another

[(2010) 13 SCC 306], Hon'ble Apex Court observed as under:-

"14.Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Holmes, J. of the US Supreme Court pointed out, there must be some free play of the joints provided to the executive authorities."

19. The applicant has failed to establish the allegation that the transfer was required to be routed through a placement committee when no such committee exists in the respondents' organisation.

Applicant has also failed to show that transfer was issued in malafide

exercise of power or that it has not been issued by a competent authority.

20. In the aforesaid backdrop, we would reject the application however with no costs. However before we part having noticed that several central Government departments and organisations have framed guidelines to follow the ratio of **T.S.R. Subramanian** *supra*, we would advise the respondents to consider framing guidelines to constitute Boards or Transfer and Placement Committee as directed in **T.S.R. Subramanian**.

21. The O.A., therefore, stands dismissed.



(Dr. Nandita Chatterjee)
Administrative Member
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(Bidisha Banerjee)
Judicial Member

