

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Original Application No. 1141 of 1995

Allahabad this the 28th day of Feb 1996

Hon'ble Dr. R.K. Saxena, Judicial Member

Dr. D.S. Singh, S/o Late Sri K.C. Singh, Senior
Scientist at present posted in Project Directorate
of Vegetable Research, 1, Gandhi Nagar, Varanasi-5

APPLICANT

By Advocate Dr. R.G. Padia

Versus

1. Indian Council of Agricultural Research through Under
Sect.(Personnel), Krishi Bhawan, New Delhi.
2. The Director General, Indian Council of Agriculture
Research, Krishi Bhawan, New Delhi.
3. Dr. R.S. Paroda, the Director General, Indian Council
of Agricultural Research, Krishi Bhawan, New Delhi.
4. The Project Director, Directorate of Vegetable
Research, 1, Gandhi Nagar, Varanasi-5.

RESPONDENTS.

By Advocate Shri J.N. Tiwari.
Shri R. Tiwari.

O R D E R

By Hon'ble Dr. R.K. Saxena, Jud.Member

The applicant has challenged the order
of transfer dated 20.10.95 and relieving order
dated 21.10.95.

2. The brief facts of the case are that the

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applicant who had started his career as Junior Plant Pathologist in the Central Potato Institute, Simla, remained posted at different places. He was transferred to Varanasi from Indore vide order dated 07.4.95 (Annexure-1). In pursuance of the said order, the applicant had joined at Varanasi on 19.4.95. He suffered from Infective Hepatitis at Varanasi and, therefore, he proceeded on medical leave from 02.9.95 to 07.10.95. On being cured, he joined on 09.10.95. He was, however, served with the transfer order dated 20.10.95 passed by the respondent no.1, on 31.10.95 whereby he was transferred from Varanasi to Port Blair. He was also served with the relieving order dated 21.10.95 passed by the respondent no.4.

3. The contention of the applicant is that this order of transfer from Varanasi to Port Blair was punitive in nature and was passed with malafide intentions because while he was posted at Gwalior and he was frequently transferred, he had approached the Madhya Pradesh High Court by filing Writ Petition. He had also filed four O.A.'s numbering O.A.696/88, 76/90, 77/90 and 78/90 in Jabalpur Bench of Administrative Tribunal for various reliefs relating to promotion in the higher grade, disposal of the representation against adverse remarks given for the year 1983-84 and stepping up the pay equivalent to that of the junior. The decision of Jabalpur Bench of the Tribunal was not complied with by the concerned authorities and, therefore, the contempt

applications were also filed by him. Since, the notices were issued to the Director General - respondent no. 2, ^{and 4} the order of transfer was passed in order to wreck the vengeance. It is also pleaded that the order of transfer is against the guide-lines annexure-9 which were issued about the transfers.

4. Feeling aggrieved by these orders, the applicant approached the Tribunal for seeking quashment of the two orders. The interim order of stay was also sought and the same was granted on 13.11.95.

5. The respondents contested the case on the ground that this Bench of Tribunal has no jurisdiction because the applicant was not only transferred but, was relieved to join at Port Blair and thus, Calcutta Bench has got the jurisdiction. The averment made about the transfer orders which were passed in respect of the applicant in the past, were said to have no bearing on the present order of transfer. It is also contended that the applicant has made bald statement of malafides without placing any material in support thereof and thus, the allegations were vague and incorrect. The plea taken in the O.A. of having filed 4 O.A.'s before the Jabalpur Bench ^{is} ~~and~~ also claimed to have no relationship with the present controversy of transfer. The transfer of the applicant is contended to have [&] been made in the interest of Organisation so that his services could be utilised in the best possible manner at Port Blair. It has been denied that the transfer order has got any nexus with the contempt

proceedings. It is also denied that the research conducted by the applicant could be prejudiced on account of the transfer order. The respondents averred that since the potential of the ~~potential~~ ^{of} the applicant could not be utilised at Varanasi and he (the applicant) was in excess of cadre strength, he was transferred rightly to Port Blair. In this way, the respondents submitted that there was no merit in the case.

6. The applicant submitted rejoinder and objected to the filing of the counter-reply by Sri C.B. Singh, Superintendent who is a Class III employee and, therefore, he was not properly authorised officer and thus, the counter-reply filed by him, should be ignored. He points out that the impugned transfer order dated 20.10.95 is to be effective from the date of joining at Port Blair and till such date when he joins there, the jurisdiction of Allahabad Bench shall continue. He has also taken other grounds which were mentioned in the O.A..

7. I have heard Dr. R.G. Padia, counsel for the applicant and Sri J.N. Tiwari, counsel for the respondents and have perused the record.

8. The scope of judicial review in the matter of transfer has been clearly laid down in various decisions of the Hon'ble Supreme Court.

Their Lordships in the case 'Union of India and Others Vs. S.L. Abbas 1994 S.C.C. (L & S) 230' rule⁸ that the order of transfer is an incident of Government service^{and} who should be transferred and whether² is a matter for 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. In another case 'Rajendra Roy Vs. Union of India and Others 1993 (1) S.L.R. 126' their Lordships of Supreme Court held that the order of transfer though causes a lot of difficulties and dislocations, could not be struck² down on that score unless the order was passed malafide or in violation of rules of services and guide-lines for transfers without any proper justification. Thus, it is clear that an order of transfer cannot be challenged unless it is established that either it was punitive in nature or it was made with malafide intentions or it violated any rules. It is, therefore, necessary that the facts of the case² to be examined in this light.²

9. The contention of the applicant is that he was transferred to Varanasi from Indore only in the month of April, 1995 vide order dated 07.4.95 Annexure-1. He had joined there by order² dated on² 19.4.95 vide annexure-2. He had fallen ill because of Infective Hepatitis and remained on medical-leave from 02.9.95 to 07.10.95; and, after he had recovered from the said ailment², he joined on 09.10.95 and thereafter the order of transfer dated 20.10.95 was served on him on 31.10.95. He further contends

that the relieving authority i.e. the Project Director-respondent no. 4 was in such a hurry that the relieving order was passed on 21.10.95 although, the transfer order was made effective from the date when the applicant joined duty at ~~new~~ place of posting. The plea of the applicant, therefore, is that it was all due to the fact that ²particularly respondent no.2 and 3 had been made parties not only in the O.A.'s which were filed before the Jabalpur Bench of Central Administrative Tribunal but, also in the Contempt Petitions which were moved by the applicant and in which notices were issued in July, 1995 and September, 1995. The applicant has brought on record the copy of Judgment annexure-4 rendered in the O.A.'s no.696/88, 76/90, 77/90 and 78/90 on 15.9.93. It has been pointed out that all these O.A.'s were directed against the respondents and Jabalpur Bench had given certain directions to the respondents to comply with. A perusal of this Judgment by which all the 4 O.A.s were decided, speaks that in O.A. 696/88, the respondents were directed to dispose of the representation of the applicant with regard to the expunction of the remarks for the year 1983-84 and to render the decision within a month from the communication of the Judgment. In the O.A. 76/90, the direction was to dispose of the representation as regard stepping up of pay of the applicant within 30 days from the date of communication of the Judgment. It was further mentioned that on failure, it would be treated as Contempt of Court. The O.A. 77/90

was disposed of by refusing to interfere in the matter. In O.A. 78/90, the posting of Sri S.C. Phadtare as Scientist, Central Research Potato Institute, Gwalior was challenged. The locus stand²~~ed~~ of the applicant was not found established and moreover he was found to have been transferred from Gwalior and thus, the said O.A. was decided against the applicant.

10. From the averments made by the applicant in the O.A. and those averments having not been controverted, it is established that right from the year 1981, the chain of frequent transfers of the applicant started; In the year 1981, the applicant was transferred from Ootacamund to Gwalior and in the year 1983, he was transferred to Simla. He was then again transferred to Gwalior in the same year 1983. In the year 1984, he was transferred vide order dated 26.6.84 from Gwalior to Lohaul Spiti(H.P.) and again in the year he was transferred from Lohaul Spiti to Gwalior. In the year 1986, he was transferred to Simla. The applicant had approached the M.P. High Court for these frequent transfers and stay was granted. The Director, however, recalled the order of transfer from Gwalior to Simla. In the year 1992, he was transferred to Indore from Gwalior and in the year 1995, he was transferred from Indore to Varanasi, where he had taken over the charge only on 19.4.95. He remained on medical leave from 02.9.95 to 07.10.95 and in the same month vide order dated 20.10.95, he was again transferred from Varanasi to Port Blair. I have gone through this history of transfers only to find out if they were regular transfers

or not. The respondents did not give any reply to the averment made by the applicant that he had been frequently transferred in the past as well as in the year 1995. The respondents simply stated in para 5 of the counter-reply that the transfers from the year 1981 to 1986 have no bearing on the present order of transfer passed in the year 1995. In order to justify the impugned order of transfer from Varanasi to Port Blair, it is stated in para 15 of the Counter that in the interest of organisation, his(the applicant's) services were required and could be utilised at Port Blair. In para 19 of the counter-reply it was also mentioned that the Research Institute at Port Blair was a general Research Institute. Since the potential of the applicant could not be utilised at Varanasi and the applicant was in excess of cadre strength, he was transferred rightly to Port Blair. It is not understandable as to why he was at all transferred from Indore to Varanasi, in the month of April, 95 if his potentials could not be utilised there and if he was to be in excess of cadre strength. This aspect ought to have been considered by the transferring authorities before the applicant was actually transferred to Varanasi. The learned counsel for the applicant, however, contends that the real facts are different. He drew my attention towards the averment which was made in para 16 of the O.A. which dealt with the institution of Contempt Petitions. It has been pleaded in this para that two Contempt Petitions no.46/94 and 47/94 were moved by the applicant because the respondent no.2 and 3 had failed to comply with the Judgment dated 15.9.93.

given by the Jabalpur Bench of Central Administrative Tribunal in the 4 O.A.s which were discussed above. What actually happened according to the applicant, the notice of the date of Contempt Petition was ^{sent &} ~~intimated~~ to the applicant at the Indore address vide annexure-5. Since the applicant was transferred from Indore to Varanasi in the meantime, the said notice was sent by the Administrative Officer of Indore Centre to Varanasi vide Annexure-7. The copy of which was also sent to the Director, Central Potato Research Institute, Simla. It appears that the Simla Centre had taken notice of ^{the said fact &} ~~day~~ and the Administrative Officer vide annexure-6 had requested the Director, National Research Institute for Soyabin, Indore to send the copy of Civil Contempt Petition to Simla Centre for information and necessary action. Thus, it is clear that since the wheels of Contempt proceedings against the respondents no.2 and 3 were moved by the applicant, the order of transfer came into being. It is, therefore, indicated by these facts and circumstances that the order of transfer was passed with malafide intention. The contention of the applicant on this count finds support from these facts. Had it not been shown, the plea of the applicant being in excess of the strength of the cadre at Varanasi, could not have been taken. This fact as was observed earlier could have been considered by the transferring authority in the very ^{beginning} ~~beginning~~ before the applicant was transferred from Indore to Varanasi.

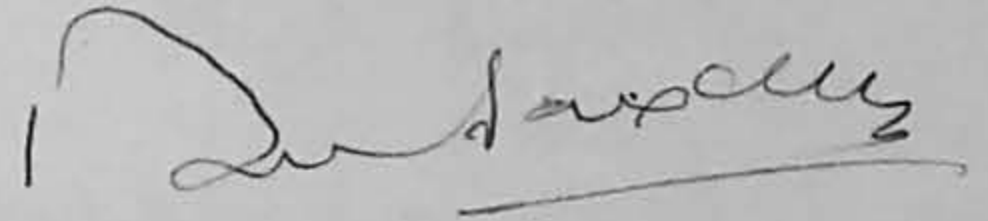
11. ² The applicant has brought annexure-9 - ~~belonging with~~ the guide lines of transfers, on record. A perusal of annexure-9 shows that tenure of posting was normally of 5 years but transfer could be made to correct embalance in the cadre strength, to fill positions in high priority projects and to utilize the experience of Scientists in appropriate fields. The learned counsel for the respondents contends that if the guide-lines for transfers are not followed, it cannot be a ground for interference and does not confer a legal ^{and} enforceable right upon the Government employee. In this connection, my attention was drawn towards the case Union of India and Others Vs. S.L. Abbas 1994 S.C.C. (L & S) 230 which I had already referred to and discussed. It is true that the guide-lines of transfer do not confer any right but this is not the only ground in the matter. I had already pointed out that the interference is possible if it is established that the impugned order was passed with malafides. In this case, it is fully established that the applicant had started Contempt proceedings against the respondents no.2 and 3 and naturally the concerned authorities were perturbed and in order to teach a lesson to the applicant, this step was taken. Otherwise, a person who was transferred only 6 months back, could not be transferred again to such a far flung ^{a place} ~~area~~ as Port Blair from Varanasi. At the cost of repeatition, I would like to mention that the plea taken in

the counter-reply that the applicant was in excess of cadre strength and his services could not be fully utilised at Varanasi, is only an after-thought. If there was reality in these facts, these points could have been considered by the concerned authorities before the applicant was transferred to Varanasi from Indore. In this way, the non-compliance of guide lines is another ground which may be taken into consideration.

12. The respondents have taken the plea that this Bench has no jurisdiction to entertain the O.A. whereby the impugned order of transfer has been challenged. His contention is that since the applicant has not only been transferred but, he has also been relieved by the order dated 21.10.95, he no more remains a Government servant within the jurisdiction of this Bench. The learned counsel for the applicant has controverted this aspect and has taken a ^{definite} ~~distinct~~ plea in the rejoinder that the transfer order was to take effect from the date when the applicant joined duty at new place of posting. The perusal of the transfer order dated 20.10.95 is clear in this respect. It mentions "the transfer would be effective from the date he joins duty at the new place of posting." It is not denied that neither the applicant has handed over the charge at Varanasi nor has he joined at Port Blair. The role of relieving authority has not been assigned by this transfer order. Thus, the relieving order dated 21.10.95 will

not divest the jurisdiction of the Bench. I am of the view that there is no substance in the plea taken by the respondents.

13. On the careful consideration of the facts and circumstances of the case, I come to conclusion that the impugned order of transfer dated 20.10.95 as well as the relieving order dated 21.10.95, are not only against the guidelines but are also suffering from malafides. They are, therefore, quashed and set aside. The O.A. is disposed of accordingly. The stay order which was granted, loses its significance. The parties shall bear their own costs.



(Dr. R.K. Saxena)
Member (J)

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