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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 104 OF 1995  
Cuttack, this the 6th day of May, 1997

Dr. Asit Kumar Mandal ..... Applicant

Vrs.

Union of India and others ..... Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? NO
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO

Jognath Das  
(S.SOM)  
VICE-CHAIRMAN  
6.5.97

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 104 OF 1995  
Cuttack, this the 6th day of May, 1997

CORAM:

HONOURABLE SRI S.SOM, VICE-CHAIRMAN

....

Dr. Asit Kumar Mandal,  
aged about 58 years,  
son of late Fatik Chandra Mandal,  
at present working as Principal Scientist,  
Office of the Central Institute of Freshwater Aquaculture  
(ICAR),  
P.O-Kausalyagang, Via-Bhubaneswar,  
District-Khurda ..... Applicant

-versus-

1. Union of India, represented through  
its Director-General, Indian Council of  
Agricultural Research, Krishi Bhawan,  
New Delhi-110 001

2. Deputy Director-General (Fisheries),  
Indian Council of Agricultural Research,  
Krishi Bhawan, New Delhi.

3. Acting Director, CIFA(ICAR),  
P.O-Kausalyagang, Via-Bhubaneswar,  
District:Khurda ..... Respondents

Advocates for applicant - M/s IC Dash, G.B.Mohanty,  
K.S.Sahoo, S.K.Parida &  
S.K.Behera.

Advocates for respondents- Mr.A.K.Misra, ASC &  
M/s Ashok Mohanty &  
T.Ratho.

Committal Sum  
6.5.97

O R D E R

S.SOM, VICE-CHAIRMAN

The applicant was working as Principal Scientist in the Central Institute of Freshwater Aquaculture (CIFA, for short) at Kausalyagang, Bhubaneswar, a research institute under Indian Council of Agricultural Research (ICAR, for short). In this application under section 19 of the Administrative Tribunals Act, 1985, he has prayed for quashing the order dated 23.1.1995 (Annexure-3) transferring him from CIFA, Kausalyagang, to Frog Research Centre (FRC, for short) at Kalyani, on the ground of his being a frog expert. The applicant has also prayed for quashing of the order dated 2.2.1995 (Annexure-6) in which he was relieved of his duties, in pursuance of the order of transfer at Annexure-3, with a direction to him to join his duties at FRC, Kalyani, after availing leave as applied for by him and joining time. He has also asked for consequential relief for a direction to the respondents to allow him to continue in his post at CIFA, Kausalyagang. It seems that the applicant was originally transferred in order dated 4.2.1994 and he came to the Tribunal in OA No.61 of 1994 which, along with OA Nos.40 and 44 of 1994, were disposed of in order dated 6.5.1994. The Tribunal keeping in view the pronouncements of the Hon'ble Supreme Court in several cases in which transfer orders had been challenged before them, noted that the applicant admittedly joined at Kausalyagang on transfer from Kalyani on 29.12.1993 and only after serving at Kausalyagang for little more than a month, he has been transferred back to Kalyani. It further appears from the order of the Tribunal

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in OA No.61/94 that the Tribunal <sup>try to</sup> ~~did~~ find out the reasons as to why the applicant was transferred back to the station from where he came only after little over a month, but the learned Senior Standing Counsel, no doubt, under instructions from the respondents, took the stand that these were not relevant considerations which could be gone into by the Tribunal in view of the decision of the Hon'ble Supreme Court in the case of Ms. Shilpi Bose and others v. State of Bihar and others, AIR 1991 SC 532, where it has been laid down that the transfer order can be quashed only on the ground of mala fide or violation of statutory rules. The Tribunal, however, quashed the transfer order with a direction to the Director-General, ICAR, to reconsider the matter in view of the observations of their Lordships of the Hon'ble Supreme Court in the case of B.Varadha Rao v. State of Karnataka and others, AIR 1986 SC 1955, the relevant portion from which judgment was quoted in the above order. Thereafter the matter was again considered by the ICAR and in Annexure-3 to the present OA, the applicant was again transferred from CIFA, Kausalyagang to FRC, Kalyani, in the order referred to by me earlier.

*Somnath Jony  
6.5.97*

3. In course of hearing, it was brought to my notice by the learned arguing counsel Sri T.Ratho for the respondents that during the pendency of this Original Application, the applicant has superannuated and on that ground it was urged on behalf of the respondents that the application has become infructuous and is liable to be dismissed. The learned lawyer for the applicant, however, submitted that in consideration of the patent illegalities

involved in the original order of transfer, the Tribunal was pleased to quash the same and had remanded the matter to the departmental authorities for reconsidering the case. In spite of this, the departmental authorities have issued the same transfer order without applying their mind. In consideration of that, he prayed that even though the applicant has retired in the meantime, a finding from the Tribunal with regard to the legality and appropriateness of the impugned transfer order would be necessary. The arguing counsel Sri Ratha on behalf of the respondents submitted that the Tribunal is free to quash the impugned transfer order, but that would not make a difference, so far as the existing situation is concerned, as the applicant has in the meantime superannuated. I cannot but deprecate too strongly the defiant stand taken by the respondents. But as the applicant in this case has superannuated in the meantime, cause of action undoubtedly no longer subsists. The application must, therefore, fail. I would, however, like to mention that the pronouncement of the Hon'ble Supreme Court in Shilpi Bose's case (supra) laying down that the court of law can quash a transfer order only on the grounds of mala fide and violation of statutory rule does not give licence to the authorities to transfer a Government servant at their whim or fancy, because it entails considerable adjustments on the part of the transferred Government servant, which have been referred to by the Hon'ble Supreme Court in B.Varadha Rao's case (supra). In the order at Annexure-3 impugned before me, the earlier transfer order has been confirmed and fresh transfer order has been issued on the ground that the applicant is a frog expert and therefore, he has been transferred to FRC at Kalyani. If for a frog

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expert there was no work at CIFA, Kausalyagang, then he need not have been transferred to CIFA, Kausalyagang, from his earlier station and transferred back after little over a month. It has been urged by the learned lawyer for the applicant that the applicant has no doubt done pioneering work <sup>on</sup> /edible frogs. At Annexure-8 is a scientific paper authored by the present applicant on the subject. But the expertise of the applicant is much wider than frog. It covers various ~~other~~ edible aquatic creatures than other fish and microbacterial food like plankton for such creatures. In view of this, it was submitted by the learned lawyer for the applicant that there was adequate work for the applicant at CIFA, Kausalyagang and his field of expertise does not necessarily imply that he should be transferred from CIFA, Kausalyagang, to FRC, Kalyani. Be that as it may, for the present purpose, it is not necessary to go into this aspect because in the meantime admittedly the applicant has retired and the cause of action no longer survives. With this observation, I hold that the application has become infructuous and the same is, therefore, dismissed. No costs..

Somnath Jom  
(S.SOM)  
VICE-CHAIRMAN  
6-5-97