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O.A. NO. 235 OF 2003
Cuttack, this the 2nd day of August, 2005.

DILIP KAR APPLICANT
ICAR & ORS. VERSUS
RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes*
2. Whether it be circulated to all the Benches of CAT? *Yes*

(M.R.MOHANTY)
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTACK.

Original Application No. 235 OF 2003
Cuttack, this the 2nd day of August, 2005.

C O R A M:

THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDICIAL)

Dilip Kar, Aged about 41 years, Son of Mr. Gobind Ch. Kar,
Resident of Vill./Po: Nayagarh (New Town), Dist. Nayagarh,
as Assistant Administrative Officer, National Research Centre
for Woman in Agriculture (ICAR) , Plot No. 1199, Jagamara
PO-Khandagiri, Bhubaneswar-30, Dist. Khurda, Orissa on transfer
to National Research Centre for Equines, Hissar, Hariyana.

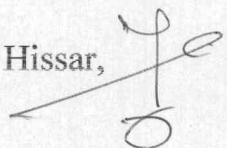
APPLICANT.

For the Applicant:- M/s. K.C. Kanungo, H.K. Swain,
B.D. Das, S. Behera, C. Padhi,
Advocates.

-VERSUS-

Indian Council of Agriculture Research represented through

1. Director General, ICAR, Krishi Bhawan, New Delhi-1.
2. Secretary, ICAR, Krishi Bhawan, New Delhi-1.
3. Deputy Secretary (Admn.), ICAR, Krishi Bhawan, New Delhi.
4. Director, National Research Centre for Woman in Agrl.
Plot No. 1199, Jagamara, PO/PS-Khandagiri, Bhubaneswar-30,
Dist. Khurda.
5. Director, National Research Centre for Equines, Hissar,



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Sirsa Road, Haryana.

6. Shri Mata Prasad, Assistant Administrative Officer,
National Research Centre for Woman in Agriculture,
Plot No.1199, Jagamara, Po/PS-Khandagiri, Bhubaneswar-30,
Dist. Khurda.

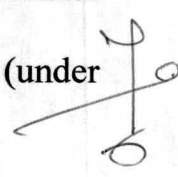
RESPONDENTS.

For the Respondents: Mr. S.B.Jena, Addl.Standing Counsel.

ORDER

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

Applicant, an Assistant Administrative Officer in the office of the NRCWA, Bhubaneswar having faced the order of transfer to NRCE, Hisra under Annexure-1 dated 5th February, 2003 had approached this Tribunal earlier in O.A. No.991 of 2002; which was disposed of in order dated 14-11-2002 holding the same to be a premature one. However, liberty was granted to the Applicant to redress his grievance (against the said order of transfer to Hisra) by representing his authorities and the latter were directed to deal with the same. The grievances of the Applicant having not been redressed by the Respondents, he has made the second journey to this Tribunal in the present O.A. filed under section 19 of the Administrative Tribunals Act, 1985; wherein he has prayed to quash the order of transfer (under Annexure-1 dated 5th February, 2003) and the relieve order (under



Annexure-2 dated 10th February, 2003) and for issuance of a direction to the Respondents to allow him to continue at Bhubaneswar.

2. Opposing the stand taken by the Applicant in his Original Application the Respondents-Department have filed a counter; to which the Applicant has also filed a rejoinder.

3. Heard Mr. K.C.Kanungo, learned counsel appearing for the Applicant and Mr. S.B.Jena, learned Additional Standing Counsel appearing for the Respondents and perused the materials placed on record.

4. Mr. Kanungo, learned counsel appearing for the Applicant submitted that no doubt transfer is an incident of service but at the same time transfer order issued de hors the Rules and/or without the authority of Rules is not only to be treated as void but that also amounts to colourable exercise of powers by the authorities. It has been submitted by him that since the present transfer of the Applicant has been made in gross violation of the statutory transfer policy/rules framed by the ICAR, the same is liable to be set aside. In support of the above submissions, he has laid emphasis on the administrative instructions printed at pages 167 and 168 of Manual of Administrative Instructions of ICAR dealing with the transfer as also instructions in regard to constitution of combined cadre printed at pages 385, 386 and 387 of the said Manual. He has further submitted that since the

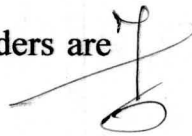
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Applicant was a direct recruit AAO, he can only be sent on deputation to another wing of the ICAR but not by way of regular transfer. It has also been submitted by him that although the Applicant has made the above submission in his representation, the same was turned down by his authorities (without answering those points) and thereby the Applicant has virtually been deprived to know the reason of the uneven action (that has been taken against him) by his Authorities. By stating so, learned counsel for he Applicant has reiterated his prayer for quashing the order of transfer.

5. On the other hand, learned Additional Standing Counsel submitted that transfer being an incident of service and that the order having been made by the competent authority, the Applicant has nothing to challenge the same. It has been submitted by him that by virtue of this transfer, the service condition of the applicant has not been changed to his disadvantage in any way and that the transfer order has been made as per rules and based on administrative need. As regards the specific plea of the Applicant (that since the AAO is a institute based post and the respective Directors being the appointing authority, he is not liable to face transfer) it has been submitted by the learned ASC that though it is an institution based post for which the Director of the Institute is the appointing authority there are several other higher Authorities at the Headquarters (whose orders are



final and as per the rules of the council) and an employee is always liable to be transferred from one institute to another at the instance of higher Authorities and there is nothing wrong in the impugned transfer of the Applicant. Finally it has been pointed out that since the transfer of the Applicant was on administrative need and done in public interest and this Tribunal not being an Appellate Authority, lacks competency to interfere with the order of transfer.

6. Having heard the submissions of the parties and having perused the materials placed on record, it is felt necessary and prudent to quote the Rules/instructions relied on by the learned Counsel for the Applicant; which reads as under:-

“5. INTER-INSTITUTIONAL TRANSFERS:-

The inter-institutional transfers shall be regulated by the following guiding principles.

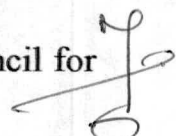
5.1.1. xxx xxxx xxxxx

5.1.2. Posts, other than scientific posts, recruitment to which is made from open market either wholly or partly:-

Inter-Institutional transfers against equivalent posts are normally admissible, provided the candidate is otherwise acceptable to the Institute to which he seeks his transfer and is taken against a post meant to be filled in by direct recruitment.”

The amended Recruitment Rules came into force w.e.f. 1.

12.1975 framed by the Governing Body and the President of the Council for



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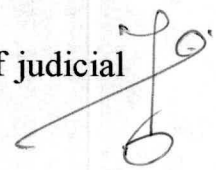
various grades of Administrative officers in the Institute under the council which provides that the Directors of the respective research Institute are the Appointing Authorities. Para 4 of the said rules provides that "The grade of Assistant Administrative Officers in the scale of Rs. 650-1200/- will continue to be Institute based as already decided and appointments there- to be made from amongst the eligible candidates in each Institute."

From the above Rules, it is abundantly clear that the recruitment to the posts of AAO are being made by the Directors and those are institute based posts and their inter institutional transfers can only be made mutually, provided persons are acceptable to the Directors of both the Institutes. The Respondents placed no materials to show the above Rules have ever undergone any change. They have also failed to produce any material to show that the transfer has been made as per the Rules. Mere stating that transfer has been made as per Rules and with the approval of the competent authority will not expose their action to healthy administration/personnel management. That apart, it is also seen that even though the Applicant has specifically brought to the notice of the authorities about the violation of the Rules, no emphasis has been laid by the authorities to clarify their position. They have failed to show as to on which Rules they have exercised their powers to issue the orders of transfer. The decisions



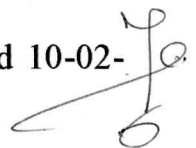
relied upon by the Respondents are of no help; since the transfer has been made in gross violation of the statutory and mandatory Rules. Since the posts of AAOs are institutional based posts and no transfer guidelines have been produced to show that they are liable to be transferred through out the country , it may so happen that on joining the new station/Institute the Applicant may stand junior most AAO in the new wing of the ICAR. This view is fortified because there is no all India seniority list of AAOs is being maintained in the ICAR. The Respondents have also failed to prove that transfer was a condition of service in so far as AAO under the ICAR is concerned.

7. As regards the plea of the Respondents that since the order of Transfer has been made in public interest/exigencies of service, the Tribunal should not interfere with it, it is to be noted that no explanation has been given to show as to what was the public interest which compelled the Authorities to transfer the Applicant. While focusing attention on the term "public interest", it has been held by this Tribunal that "the expression 'public interest' is not a magic word; which can do service for anything in any situation; nor is it a carpet under which anything could be concealed. The expression 'public interest' has to bear a definite purpose and the reason need be made available/disclosed at the earliest in course of judicial



scrutiny. The expression 'public interest' like the expression exigency of service is often made as an apology for something that can not be justified. It is not that these concepts are not capable of visible demonstration and, in no circumstances that can be allowed to be used as a camouflage for a collateral purpose." In the present case except such bald statement of public interest, no public interest has been shown to exist while passing the impugned order of transfer. In the circumstances it is the bounden duty of the Respondents-Department to explain as to what that public interest was, which prompted them to disturb the Applicant in gross violation of Rules. Apparently, the Respondents have failed to produce a scrap of paper/material to explain the 'public interest/administrative exigency', excepting the fact that in order to accommodate another employee; which, by any stretch of imagination can only be construed as 'personal interest'.

8. In the above view of the matter, considerable force in the submission of the learned counsel for the Applicant has been found out (that the Applicant is not liable to be transferred to any other wing of the ICAR) and, therefore, the order of transfer under Annexure-1 dated 5.2.2003 is liable to be quashed and set aside; which is ordered accordingly. In the consequence there of the order of relieve (under Annexure-2 dated 10-02-

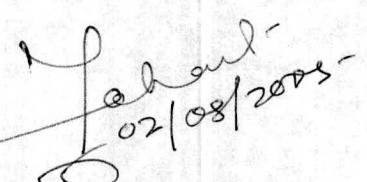


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2003 also stands set aside/quashed. The Applicant be accordingly, allowed to join in his present assignment at Bhubaneswar.

9. In the result, this O.A. is allowed. No costs.


(M.R. MOHANTY)
MEMBER (JUCIAL)