

O.A.No.1043/2002

ORDER DATED 10.01.2003

Applicant ( Dr.Baij Nath Singh, the Director of Central Rice Research Institute, under the Indian Council of Agricultural Research, at Cuttack ) having faced an order of transfer, as Officer on Special Duty in the Directorate of Rice Research at Hyderabad, under Annexure-04 dated 9th December, 2002; has filed this Original Application under Section-19 of the Administrative Tribunals' Act, 1985 on the grounds that the said transfer is ~~is~~ a punitive one, resulting in his reversion as against a non-sanctioned post unequal to his status, and that the said order is an out-come of mala-fides.

2. Respondents have filed a counter opposing the case of the Applicant, inter alia stating therein that the said transfer has been made for the smooth running of the Administration <sup>and in</sup> exigencies of service. It is the case of the Respondents that for an impartial and fair enquiry into the allegations levelled against the Applicant, the impugned transfer order has been passed. Respondents have also filed a show cause seeking modification/vacation of the ad-interim order of stay granted by this Tribunal on 20.12.2002.

3. Having heard Mr. P.K.Padhi, learned Counsel appearing for the Applicant and Mr. Aswini Kumar Mishra, learned Counsel specially engaged for the Respondents (assisted by Mr. Sahil Bhusan Jena, learned Additional Standing Counsel for the Union of India) I have perused the various pleadings of the parties and the notes of arguments, filed today in the Court, drawn by the learned Counsel appearing for the Applicant.

4. It is the case of Mr. Padhi, learned Counsel appearing for the Applicant that since the Applicant was selected and appointed for the post of Director, Central Rice Research Institute, Cuttack (Orissa) for a tenure of five years under Annexure-02 dated 28th of December, 1999, he is not liable

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to be transferred any where, from his present place of posting as Director. It is further submitted by the learned Counsel for the Applicant that since the transfer of the Applicant as is evident, has been actuated with some allegation; without giving any opportunity to have his say in the matter, he ought not, to have been disturbed from his present place of posting. Thus, it is his case that the impugned order of transfer, which is punitive in character ( in the ~~given~~ circumstances) is an out-come of gross violation of principles of natural justice.. It has been submitted that the order of transfer has been made vindictively with male-fide intention and, that too, <sup>as</sup> against a non-sanctioned post unequal to his status. Since the Applicant has been posted against the post of Officer on Special Duty, it is submitted by the Applicant that the same amounts to reversion; which could not have been made without giving an opportunity to the Applicant/without complying the mandate of the Constitution/as he is going to be adversely affected by such order of transfer. Besides the above submissions; learned Counsel for the Applicant, in support of his contention, relied upon very many decisions of different Courts/Tribunals, which have also been duly taken note of.

5. Mr. Mishra, learned Counsel appearing for the Respondents, has submitted that the Applicant has not been transferred with any mala-fide intention or as a measure of punishment. The order of transfer does not bear any stigma- rather the same has been made in the ' Public Interest '. It is his further submission that with a view to remove certain unpleasant situation and for conducting free and fair enquiry into certain allegations, levelled against him, it was thought proper by the competent authority to transfer the Applicant from his present place of posting. Neither the said order of transfer of the Applicant has been actuated with any malice, nor by such transfer/posting the Applicant is subjected to any reversion nor, the post against which the Applicant has been transferred carries less scale of pay. It was further submitted by Mr. Mishra that

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in the order of appointment dated 28th December, 1999 (Annexure-02) , it was clearly stipulated that the headquarters of the Applicant will be initially at C.R.R.I. (Cuttack/Orissa) but he will be liable to be transferred any where in India. In this connection, he drew my attention to various judicial pronouncements; which have been take note of.

6. At the out-set it is to be noted that transfer is an incident of service. It is also undisputed that transfer/posting of an employee is entirely for the employer/competent authority to decide as to when, where and at what point of time a public servant is to be transferred. In very many cases, the Hon'ble Apex Court of India, have cautioned the Courts/Tribunals not to interfere with the orders of transfer, unless the same are actuated with malice or in violation of the statutory and mandatory provisions. The interference of Courts/Tribunals in an order of transfer is possible only if the same is proved as a punitive one/out come of malafides.

7. It is not for this Tribunal, in view of the foregoing discussions, to make a roaving enquiry to the allegations and counter allegations made by the parties in this case. In the fitness of things, it would be just to ask the President of the Indian Council of Agricultural Research to look into the pros and cons of the grievances( as raised by the Applicant in this case) afresh, by giving a personal hearing to the Applicant, and pass appropriate orders to meet the ends of justice. Respondents( especially, the President of I.C.A.R. at New Delhi) are accordingly directed. Respondents should act expeditiously, by giving anxious consideration to the matter, so that a Senior Scientist like the Applicant should not remain under frustration.

8. In the result, with the above observations and directions, this Original Application is disposed-of, by leaving the parties to bear their own costs. Before parting

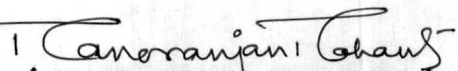
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with the case, at this stage, the Applicant is asked, in order to prove his bonafide, that he should go and join at his new place of posting ( Hyderabad ) ; which would be without prejudice to the redressal of his grievances by the President of I.C.A.R./ Govt. of India/ Respondents No.1.

9. Send copies of this order to all the Parties ( the Applicant and the Respondents ) and free copies of this order be given to the learned Counsels appearing for both the sides. Free copies of this order be also sent to the President of the I.C.A.R., New Delhi and also to Dr. S.Rajamani, Head, Division of Agricultural Entomology, C.R.R.I, Cuttack.

  
( MANORANJAN MOHANTY )  
MEMBER (JUDICIAL)  
10/01/2003

AKB/P.S.