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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. NO. 260/00487 of 2014

Cuttack this the 25th day of June, 2014

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THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)

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Dr.Sriprakash Mohanty, aged about 48 years, Son of Sri Rudra Prasad Mohanty at present working as Principal Scientist, Microbiology, Central Institute of Fresh Water Aquaculture, At-Kausalyagang, Bhubaneswar-751002.

...Applicant

(Advocates: M/s.U.C.Pattnaik, S.D.Mishra, S.Patnaik, M.R.Sahoo)

VERSUS

Union of India represented through

1. Its Secretary, Indian Council Agricultural Research (in short ICAR), Ministry of Agriculture, Krishi Bhawan, New Delhi-110001.
2. Secretary, Department of Agricultural Research and Education and Director General Indian Council Agricultural Research (in short ICAR), Krishi Bhawan, New Delhi-110 001.
3. Director, Central Institute of Fresh Water Aquaculture, AT-Kausalyagang, Bhubaneswar-751002.

... Respondents

(Advocate: Mr.S.B.Jena)

ORDER

A.K. PATNAIK, MEMBER (JUDICIAL):

Heard Mr.U.C.Patnaik, Learned Counsel for the Applicant and Mr.S.B.Jena, Learned Additional CGSC (on whom copy of this OA has been served) who is present in Court.

2 The main contention of Mr.Patnaik is that the applicant was compelled to approach this Tribunal for the second time due to non-consideration of his grievance in proper prospective as directed by this



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Tribunal in order dated 17th February, 2014 in OA No. 916 of 2013. In order to substantiate that the order of rejection is not bona fide exercise of power it has been contended by him that soon after the rejection of the representation, the applicant was relieved in absentia without giving him any breathing time to hand over the charge etc. Accordingly, it was submitted by Mr. Patnaik that as the exercise of power is not bona fide the applicant is entitled to the relief claimed in this OA and the relief that has sought by the applicant in this OA is to quash the order dated 12.12.2013 in which he was transferred and posted to the Field Station Kalyani, Regional Research Centre, CIFA at Rahara, the order of rejection of his representation dated 03.06.2014 and the order of relieve dated 04.06.2014 with further prayer to direct the Respondents to allow him to continue in his present place of posting i.e. Central Institute of Fresh Water Aquaculture, Kausalyagang, Bhubaneswar as Principal Scientist, Microbiology. By way of ad interim measure he has also prayed that pending final decision on this OA direction be issued to the Respondents to allow him to continue in his present place of posting notwithstanding the relieve order dated 04.06.2014.

3. On the other hand, Mr. S.B. Jena, Learned Additional CGSC appearing for the Respondent-Department has submitted that the applicant is having All India Transfer liability. As the service of the applicant is required at the new station, he was transferred and posted to Field Station Kalyani, Regional Research Centre, CIFA at Rahara in public interest. The allegation



that the posting of the applicant to Rahara is not bona fide is not correct. Further it was contended by him that as the applicant has already been relieved from his place of posting granting of stay as prayed for by him does not arise. However, it was contended by him that if some time is allowed he will obtain instruction and file a detailed reply justifying that there is no flaw in the order of transfer, rejection of his representation and consequently relieving him to join in his new place of posting. He further submitted that the order of rejection is a reasoned one and cannot be termed to be a cryptic warranting interference of this Tribunal.

4. Having considered the rival contentions of the parties, perused the materials placed on record. I find that while continuing as Principal Scientist, Microbiology, Central Institute of Fresh Water Aquaculture, Kausalyagang, Bhubaneswar, vide order dated 12.12.2013, the applicant was transferred and posted to Field Station, Kalyani of RRC, CIFA, Rahara, West Bengal which he has challenged in OA No. 916 of 2013 on the grounds that the said order of transfer is a cryptic one without explaining as to what are the public interest which necessitated the posting of the applicant that too during mid academic session; there should have been six persons in the transfer committee but the committee was constituted with four persons only; there is no post of Principal Scientist at RRC, CIFA, Rahara, West Bengal and that as per the transfer policy the longest staying Principal Scientist should have been transferred first which has not been adhered to.

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On being found that the applicant filed the said OA without making any representation to his authority, this Tribunal disposed of the matter vide order dated 17th February, 2014 relent portion of the order reads as under:

“6. In view of the above, we are of the considered opinion that as the applicant has approached this Tribunal without availing of opportunity by way of filing representation, we dispose of this Original Application, by giving liberty to the applicant to make a comprehensive representation to Secretary, ICAR within a period of 15 days and on receipt of the representation, if filed by the applicant within a period of 15 days, Secretary, ICAR is directed to consider the same and pass a reasoned and speaking order within a further period of six weeks and communicate the result thereof to the applicant. It is made clear that till the representation is considered and the result is communicated to the applicant no coercive action will be taken against the applicant. No costs.”

5. In compliance of the aforesaid order/direction, the applicant submitted his representation on 28.02.2014 and as it appears the Secretary, ICAR, New Delhi rejected the said representation vide order dated 3rd June, 2014. The grounds taken in support of the rejection reads as under:

“WHEREAS, Dr. S.Mohanty made a representation dated 28.02.2014 (received on 04.03.2014 in the Council), which has been examined in the light of the requirement of a scientist of his seniority at the Regional Research Station of Rahara and the Kalyani Field Station and provision of the ARS rules. In this regard, I have also consulted the Deputy Director General of Fisheries Science at the ICAR Headquarters. On a careful consideration of all the facts and circumstances, I am convinced that the Transfer Committee has transferred Dr.S.Mohanty to Kalyani after an objective consideration of the requirement of a Scientist of his experience and seniority. After serving for over 17 years at the same station in a service that carried an all India transfer liability, Dr.Mohanty has no basis to allege mala fide on the part of the Director, CIFA and the



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Transfer Committee Dr Mohanty would be well advised in the interest of work to take up his new posting at the earliest.

6. Thereafter, as it appears, vide order dated 4.6.2014 the applicant was relieved from his present place of posting. It is worth-mentioning that Public administration is responsible for the effective implication of the rule of law and constitution commands for adjudicating good administrative decisions. Whenever the executive fails, the Courts/Tribunal come forward to strike down an order passed by them passionately and to remove arbitrariness and unreasonableness, for the reason, that the authority by its illegal action becomes liable for forfeiting the full faith and credit trusted with it. It has been held by the Hon'ble Apex Court that if all the safeguards provided under the statute are not observed, an order having serious consequences is passed without proper application of mind, having a casual approach to the matter, the same can be characterized as having been passed mala fide, and thus, is liable to be quashed (Ref. G. Sadanandan v. State of Kerala & Anr, reported in AIR 1966 SC 1925). Further it is a settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order meaning thereby meeting/answering all the points raised and every such action may be informed by reason and it follows that an act un-informed by reason is arbitrary, the rule of law contemplates governance by law and not by



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humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that “be you ever so high, the laws are above you.” This is what a man in power must remember always.” (Ref. Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. & Ors., AIR 1991 SC 537).

7. Similarly in the case of Onkar Lal Bajaj –V- Union of India and another, AIR 2003 SC 2562 it has been held by the Hon’ble Apex Court that “the role model for governance and decision taken thereof should manifest equity fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious action. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fairplay and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade that decision cannot be allowed to operate.”

8. Law is well settled that a judicial decision of Courts/Tribunal is not available to be tinkered by the Government or the Executive Branch.



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The Executive Branch of Government bears a great responsibility for upholding and obeying the judicial orders. Respect for law and its institution is essential in our democratic set up as the constitution enjoins the rule of law. By-passing the orders of the Court amount to willfully circumventing the decisions in indirect manner and as such, the authority or officer is liable to Contempt of Court. No authority can claim immunity from Contempt Liability.

9. I have specifically gone through the points raised by the applicant in his representation dated 28.02.2014 and the earlier order of this Tribunal vis-à-vis the grounds stated in the order of rejection. I am not at all convinced that the rejection of the representation of the applicant is in accordance with the order of this Tribunal inasmuch as the order of rejection shows that the representation of the applicant has been rejected without due application of mind to the points raised by the applicant including the specific one i.e. mala fide exercise of power. As such the order of rejection of representation is not sustainable in the eyes of law and, therefore, the subsequent order of relieve is bound to fall.

10. As discussed above, when the order is not sustainable in the eyes of law I do not find any justification to admit this OA and grant time to Mr. Jena to file reply as law is well settled in the case of Mohinder Singh Gill Chief Election Commissioner, AIR 1978 SC 851=(1978) 1 SCC 405 that "When a statutory functionary makes an order based on certain grounds,



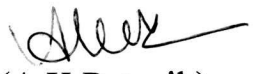
its validity must be judged by the reason so mentioned and cannot be supplemented by a fresh reasons in the shape of an affidavit or otherwise. Otherwise an order ban in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds.” And in the case of Commissioner of Police Bombay Vs Gordhan Das Bhanji, AIR (39) 1952 SC 16 that “we are clear that public orders, publicly made in exercise of a statutory authority cannot be construed in the light of the explanation subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to a public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to a language used in the order itself.”

11. Judging on the anvil of the aforesaid premises, the irresistible conclusion is that the order of rejection of representation and consequently the order of relieve are not sustainable in the touch stone of judicial scrutiny. Hence both the orders are hereby quashed and the matter is remitted back to the Respondent No. 1 to reconsider the representation as directed in earlier OA afresh and communicate the decision in a well reasoned order to the applicant. The applicant is deemed to have been continuing in his present place of posting till a decision is taken and communicated to him, as directed

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above. With the aforesaid observation and direction this OA stands allowed to the extent stated above. There shall be no order as to costs.


(A.K. Patnaik)
Member (Judicial)

