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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00710 of 2014
Cuttack, this 21st day of May, 2015

Dr.Sriprakash Mohanty...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *yes*
2. Whether it be referred to CAT, PB, New Delhi or not ? *yes*

(R.C.MISRA)
MEMBER(A)



CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00710 of 2014
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CORAM
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Dr.Sriprakash Mohanty
Aged about 48 years
S/o. of Sri Rudra Prasad Mohanty
At present working as Principal Scientist (Microbiology)
Central Institute of Fresh Water Aquaculture
At-Kausalyagang
Bhubaneswar-751 002

...Applicant

By the Advocate(s)-M/s.U.Ch.Patnaik
S.D.Mishra
S.Patnaik
M.R.Sahoo

-VERSUS-

Union of India represented through

1. The Secretary
Indian Council of Agricultural Research (ICAR)
Ministry of Agriculture
Krishi Bhawan
New Delhi-110 001
2. The Secretary
Department of Agricultural Research & Education
And Director General Indian Council Agricultural
Research(ICAR)
Krishi Bhawan
New Delhi-110 001
3. The Director
Central Institute of Fresh Water Aquaculture
At-Kausalyagang
Bhubaneswar-751 002

...Respondents

By the Advocate(s)-Mr.S.B.Jena



ORDER
R.C.MISRA, MEMBER(A):

Applicant herein is presently working as Principal Scientist (Microbiology) in the Central Institute of Freshwater Aquaculture, (in short CIFA) Kausalyagang, Bhubaneswar. In this Original Application under Section 19 of the A.T.Act, 1985, he has sought for the following relief.

“...to admit this Original Application and call for the records relating to the transfer and relieve of the applicant and upon hearing the parties and on perusal of the records, be pleased to quash the impugned order under Annexures-A/11, A/40 and A/41;

Or pass any other order/orders as this Hon'ble Tribunal deem fit and proper in this case

Allow this Original Application with cost”.

2. Shortly stated, the facts of the matter are that applicant, while working as Principal Scientist in the Fish Health Management Division in the CIFA Headquarters, ~~he~~ was transferred to Field Station, Kalyani of RRC, CIFA, Rahara, West Bengal by an office order dated 12.12.2013. Being aggrieved, he approached this Tribunal in O.A.No.916 of 2013 for quashing the said order of transfer and to allow him to continue at Kausalyagang. This Tribunal, while disposing of the said O.A. vide order dated 17.02.2014 held that the applicant had rushed to the Tribunal without availing of the opportunity of filing a representation before the authorities and accordingly, granted liberty to the applicant to make a comprehensive

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representation to the Secretary, Indian Council of Agricultural Research (ICAR) within a period of 15 days and it was directed that if such a representation was filed within the stipulated time, the Secretary, ICAR would consider the same and pass a reasoned and speaking order within a period of six weeks and communicate the result thereof to the applicant. In compliance of the orders of the Tribunal, applicant submitted a representation to the secretary, ICAR on 28.2.2014 which the latter considered and passed an order dated 3.6.2014. While disposing of the representation, the Secretary, ICAR noted that he was convinced that the Transfer Committee had transferred the applicant to Kalyani after an objective consideration of the requirement of a Scientist of his experience and seniority. He was further of the view that after serving for over 17 years at the same station in a service that carried an all India transfer liability, applicant had no basis to allege mala fide on the part of the Director, CIFA and the Transfer Committee. With these comments, the Secretary, ICAR advised the applicant to take up his new posting at the earliest in the interest of work. After this order was passed on 3.6.2014, the CIFA authorities relieved the applicant from their organization by office order dated 4.6.2014 and directed the applicant to report for duties at his new place of posting. However, the applicant was still aggrieved by the view taken by the respondent-authorities and approached this Tribunal in O.A.No.487 of 2014. This O.A. was disposed of vide



order dated 25.6.2014 holding that the rejection of the representation was not in accordance with the orders of the Tribunal inasmuch as the order of rejection showed that the representation was rejected without due application of mind on the points raised by the applicant in his representation including the specific one, i.e., mala fide exercise of powers. Consequently, the Tribunal quashed the order of rejection of representation and also the order of relief of the applicant and remitted the matter back to Respondent No.1, i.e., Secretary, ICAR to reconsider the representation and communicate the decision in a well reasoned order to the applicant. In compliance of the orders of this Tribunal, the Respondent No.1 passed an order dated 2.9.2014 in which he came to a finding that no mala fide intention or procedural lapse could be established in this intra-institutional transfer in the larger interest of the organization and with a view to enhancing the livelihood of fish farmers of the East and North Eastern Region. Consequently, Respondent No.1 rejected the request of the applicant for retention at CIFA, Kausalyagana as administratively and technically it was not feasible. A further advice was given to the applicant to join his assignment at Rahara at the earliest possible. This order dated 2.9.2014 has again failed to satisfy the grievance of the applicant and therefore, he has challenged this order by filing the present Original Application.



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3. Applicant in this Original Application has raised various grounds while challenging the impugned order passed by Respondent No.1.

4. First of all, he has mentioned that the ICAR has passed a non-speaking and non-reasoned order without proper application of mind. Even though he has served for 17 years in the present station, that should not be a ground for his transfer since many other Scientists who have served more than 17 years are continuing at CIFA, Bhubaneswar. Further, there are number of Fish Health Discipline fresh Scientists who have been recruited and one such Scientist has been posted to CIFA, who should have been posted at RRC, Raheara instead of transferring the applicant who is a Principal Scientist. Applicant further challenges the constitution of Transfer Committee on the ground that instead of having seven members, only four members constituting the Committee had recommended his transfer. It is further agitated by the applicant that the senior-most Scientist in the present station should have been transferred in case such a transfer was required in the interest of work. In case the applicant is disturbed from the present station, it will be detrimental to the interests of Senior Research Fellows who have been working under the supervision of the applicant. Many students who have been doing Ph.D also will be affected by such transfer. Moreover, applicant should not have

Recd

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 been transferred to a post which is not befitting his position since the post of Principal Scientist is not available at Field Station, Kalyani.

5. Per contra, Respondents have filed their counter. It has been submitted by the Respondents that the applicant is in a transferable job having an all India transfer liability. The Director, CIFA is the competent authority to effect intra institution transfer. Applicant has served for about 18 years already in the present station and therefore, this order of transfer cannot be termed as mala fide. At the time of joining his service, applicant was informed that since he has joined as a member of ARS Scientist cadre, he is liable to be transferred ^{to} in any place in India and also required to serve the minimum period of time in comparatively ^{least} developed areas of the country. CIFA, Bhubaneswar has four Regional Centers and Rahara is one of them, Kalyani being its Field Station. Against a cadre of seven sanctioned posts of Principal Scientists, four Scientists are in possession ^{of them} and keeping that in mind, the order of transfer has been passed. There was a requirement of Scientist from the Fish Health & Management Division and the applicant's case was considered for posting in order to man the project at Field Station, Kalyani. It is contended that the Transfer Committee has been reconstituted by the Director as per the guidelines. It is further submitted that there is a vacancy of Scientist in the discipline of Fish Health at Rahara

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and even though the applicant is a Principal Scientist, he could be posted to this place. All these points have been duly considered by the Secretary, ICAR and thereafter, only, the authorities have disposed of the representation of the applicant by rejecting the same.

6. Applicant has also filed a rejoinder in which his main contention is that the issues raised by him have not been duly considered by the authorities. A point has been raised as to why when according to transfer policy, the longest staying Principal Scientist should have been disturbed, the applicant has been transferred to a place where there is no sanctioned post of Principal Scientist. In the rejoinder, again the constitution of Transfer Committee has also been challenged. It is further contended that there are Fish Health Management Scientists available in the Division who could have been transferred to Kalyani whereas on ~~the~~^{be} mala fide consideration the authorities decided to transfer the applicant. Other points regarding the difficulties that would ^{be} caused to various research scholars working in different projects under the applicant have been agitated in the rejoinder. It is further submitted that the submission of the respondents that the transfer has been effected in public interest is not at all correct. It is the personal mala fide intention which has guided the authorities for effecting the order of transfer.

P. Ravi

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7. Having heard the learned counsels for both the sides, I have perused the necessary records as well as the written notes of submission filed by both the sides.

8. The first point to be noted is that the applicant being aggrieved by an order of transfer from Bhubaneswar to Kalyani in the state of West Bengal has approached the Tribunal in this third round of litigation. In the earlier O.A., direction was issued by the Tribunal to the concerned authorities to dispose of the representation to be filed by the applicant. In O.A.No.487/14 decided on 25.6.2014, it was held that the representation of the applicant was not disposed of strictly as per the direction of the Tribunal and therefore, in a very detailed order passed by the Tribunal, a further direction was issued to the Secretary, ICAR to reconsider the representation. After the reconsideration also by passing the impugned order dated 2.9.2014, the respondents have reiterated their earlier order of transfer upon considering the various issues as per the direction of the Tribunal. Coming to the important point^e raised by the applicant, I find that his main allegation is about the wrong constitution of the Transfer Committee and non-availability of the post of Principal Scientist in the new place of posting, viz., Field Station, Kalyani. Applicant has also raised a point that even though he is a Principal Scientist, he has been asked to work under a Scientist In charge in the new place of posting. This point, of course, has been clarified by the Respondents who have submitted that the



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Scientist In charge at RRC, Rahara is one Dr.P.P.Chakravorty, who is also a Principal Scientist promoted on 5.8.2008. On the other hand, applicant was promoted as Principal Scientist on 10.9.2011. The point made by the Respondents is that the applicant's feeder cadre is Scientist and therefore, his posting under the In charge of the Field Station at Kalyani does not suffer from any irregularity or mala fide since another Principal Scientist is functioning as Scientist In charge at RRC, Rahara.

9. With regard to the constitution of Transfer Committee, the learned counsel for the Respondents has submitted that the Committee had been reconstituted as per the guidelines.

Learned counsel for the applicant has been repeatedly making a point that there are other young Scientists in the discipline of Fish Health & Management who could have been posted to Kalyani sparing him from the order of transfer. To this point, the learned counsel for the Respondents has replied that this decision is a conscious decision of the Respondents after due consideration of the facts and circumstances and this cannot be agitated before the Tribunal. The Respondents have further pleaded that transfer is an incidence of Government service and the employee does not have any vested right to continue to be posted at a particular place. This position has been reiterated from time to time by the Hon'ble Apex Court in various decisions laying down that the authorities are perfectly within their rights to make transfer in public interest or on

administrative considerations. In this regard the decision of the Hon'ble Supreme Court in **Gujarat electricity Board vs. Atmaram Sungomal Poshani (AIR 1989 SC 1433)** reads as under.

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the another is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is necessary in public interest and efficiency in the public administration"

10. In Union of India vs.H.N.Kirtania (AIR 1989 SC 1774),

the Hon'ble Supreme Court has held as under.

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fide".

11. It is the case of the applicant that there are Principal Scientists who have been working for a longer period in the present station. So, his question is why should he be transferred when Principal Scientists having even a longer period of stay than him are continuing at CIFA, Bhubaneswar ? Learned counsel for the applicant in this regard was asked to submit information about the various places of postings of the applicant under ICAR. Learned counsel has submitted the information that the applicant joined the Fish Health Management Division at CIFA on the basis of the examination

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conducted in the year 1994 and he has been continuing at CIFA, Bhubaneswar since then. Therefore, it is evident that the applicant has not been subjected to transfer so far. He was posted as Scientist CIFA, Bhubaneswar in the year 1996 and promoted as Principal Scientist in the year 2011 and his question as to why the incumbents continuing earlier than him were not disturbed whereas he was transferred cannot be gone into by the Tribunal since the present transfer order has been issued on the ground of administrative requirement and also in public interest. CIFA is having the project activities and if the Director of CIFA and also the Secretary, ICAR for deploying their Scientists or the Principal Scientists effected intra-institutional transfer in a particular manner, the Tribunal would not like to interfere in this decision unless there is adequate material available to establish that there was any mala fide intention behind such transfer or there was a violation of any statutory rules. It has been brought to my notice by the learned counsel for the Respondents that in the case of *Union of India vs. SL Abas (AIR 1993 SC 244)*, the Hon'ble Apex Court has observed that the Government instructions on transfer are merely guidelines without any statutory force and the Courts/Tribunals cannot interfere with the orders of transfer unless the said order is alleged to have been passed by malice or where it is made in statutory



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violation. Therefore, the various points raised by the applicant that even more senior persons are continuing in CIFA and the constitution of Transfer Committee etc. cannot constitute sufficient ground for the Tribunal to interfere with the orders of transfer. The most important and striking point here is that this Tribunal has twice in the past remitted the matter back to the Respondents to first consider the representation to be filed by the applicant and secondly, to reconsider the order after the disposal of the representation. This was done in order to give an opportunity to the Respondents to consider the grievance of the applicant with regard to the orders of transfer. In a way, it was also emphasized by the Tribunal that the administrative authorities have to consider these matters in the light of various guidelines and unless there is an infraction of the statutory provisions, the Tribunal would not like to interfere.

12. With regard to the point of mala fide, I do not find any material which has been brought out by the applicant in support of his arguments.

13. In the case of ***E.P.Royappa vs. State of Tamil Nadu & Ors (AIR 1974 SC 555)***, the Hon'ble Apex Court has observed as follows:

"The Court would therefore be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration".



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14. In the light of the decisions of the Hon'ble Apex Court, the applicant has failed to bring out any material evidence in respect of allegations that the respondent-authorities have been acting in a mala fide manner in so far as his transfer is concerned. It is needless to mention here that officials engaged in public service will have to serve in various positions as per the valid orders of their authorities and also render service in respect of the disciplines. Transfers effected in ordinary course should not disturb the Govt. servant^e to such an extent that they would fail to understand their duties to the Government and the public. In the case of SC Saxena (supra) the Hon'ble Apex Court has deprecated the practice of approaching the court by the Government employees against the transfer orders rather than^e joining at the transferred place.

15. The present applicant has been repeatedly approaching the Tribunal without joining in the new place of posting as per the orders of transfer. A course was also open to him to join the new place of posting, ~~stay~~^{stay} working^e there and thereafter to bring the grievances with regard to his transfer to the notice of the concerned authorities praying therein for redressal. In the present case, transfer order was issued on 12.12.2013. After the disposal of the representation, as per the orders of the Tribunal, he was relieved on 4.6.2014. Again, the applicant filed O.A.No.487 of 2014 and the Tribunal, vide dated 25.6.2014 quashed the order of rejection dated 3.6.2014 and the order of



relief dated 4.6.2014. Thereafter, the Secretary, ICAR reconsidered the matter as per the directions of the Tribunal and brought out his orders dated 2.9.2014 which again has been challenged in the present O.A.

16. Considering the above facts, it appears but reasonable to pass the direction that the applicant should join his new place of posting, start discharging his functions. If subsequently, he has any further grievance, he may agitate the same before the concerned authorities. That will be in the interest of public as well as in keeping with the duties assigned to the Government servant.

17. In the light of the above observation, I do not find any ground to interfere with the impugned orders dated 2.9.2014 which has been issued by the Director(P) with the approval of the Secretary, ICAR and Addl. Secretary, DARE, in compliance of the orders of the tribunal in O.A.No.487/2014.

18. In the result, the O.A. being devoid of merit is dismissed.
No costs.


(R.C.MISRA)
MEMBER(A)

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