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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00749 of 2014
Cuttack, this the 08th day of January, 2016

Akshaya Kumar Prusty Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be referred to PB for circulation?


(A.K.PATNAIK)
Member (Judl.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00749 OF 2014

Cuttack, this the 08th day of January, 2016

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

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Akshaya Kumar Prusty,
aged about 48 years,
S/o Late Gangadhar Prusty,
At- Khaira, PO- Badchana, Dist- Jajpur,
At present serving as Assistant in the
Central Institute for Fisheries Aquaculture,
Kausalyagang, At/PO- Kausalyagang,
Bhubaneswar, Dist- Khurda .

...Applicant

(Advocates: M/s. J.Sengupta, D.K.Panda, G. Sinha, A. Mishra.

VERSUS

Union of India Represented through its

1. Secretary to Govt. of India,
Ministry of Agriculture,
Krishi Bhawan, New Delhi.
2. Indian Council of Agriculture Research represented through its
Secretary, ICAR
Krishi Bhawan, New Delhi-110001.
3. Deputy Director General (Fisheries),
ICAR, Krishi Anusandhan Bhawan-II,
PUSA, New Delhi - 110012.
4. Director,
Central Institute for Fisheries Aquaculture,
Kausalyagang, At/PO- Kausalyagang,
Bhubaneswar, Dist- Khurda.

..... Respondents

Advocate(s) : Mr. S.B.Jena.

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O R D E R

A.K.PATNAIK, MEMBER (JUDL.):

This O.A. has been filed seeking the following relief:

“In view of the facts stated in Para 4 of the application the applicant prays that the Hon’ble Tribunal may graciously be pleased to quash the order dated 02/09/14 (Annexure-A/11) in transferring the applicant to Regional Research Centre, Vijayawada;

And further be pleased to quash the order dated 16-10-14 passed by the respondent No. 3 (Annexure-A/14)

And further be pleased to direct the respondents to allow the applicant to continue at CIFA, Kausalyagang.”

2. Respondents have filed counter opposing the prayer of the applicant on various grounds, which would be discussed at the appropriate place infra.
3. Applicant has filed his rejoinder.
4. Heard Mr. J.Sengupta, Ld. Counsel for the applicant, and Mr. S.B.Jena, Ld. Counsel appearing for the Respondents.
5. Ld. Counsel for the applicant placing reliance on the averments made in the O.A., on the rejoinder and the annexures appended thereto, would submit that the order dated 29.01.1990 (Annexure-A/1) no doubt postulates that the applicant can be transferred to anywhere in India provided there is vacancy in the new place of posting whereas at Vijaywada, the place to which applicant has been transferred, there is no such vacancy. In support of his stand that there is no post at Vijaywada, the applicant placed reliance on the letter dated 24.08.2010 and 05.12.2014. As the applicant demitted his membership of the union on 31.07.2014, in terms of the minutes of the proceeding dated



27.02.2012 he would not to have been disturbed within one year from the date of demitting his membership of the union. He has been transferred to such far away place without the approval of the transfer committee constituted for the purpose. Moreover, as per Chapter IV of the ICAR Establishment and Administrative Manual, an excerpt from which is extracted herein, "Class-III and IV employee of the Institute/Regional/Sub-Stations are not to be transferred as they are ordinarily recruited by local advertisement". Chapter IV of ICAR Establishment and Administrative Manual is quoted here below:

"11.4 Administrative

The employee of administrative categories are appointed by the respective institutes and ICAR Headquarters as per the sanctioned post. They are however, liable to transfer from one institute to another, from institute to headquarter or vice versa or to any other places in India. In this category there is a combined cadre of Administrative Officer and Finance & Accounts Officer. Posting/Transfer of the members of the Service are made by the ICAR Headquarter as per the sanctioned posts and in public interest. They are however, liable to be transferred to any institute, station or centre of the ICAR all over India. The institute-wise posting of the members of the Service will be on fixed tenure of 4 years, extendable by 2 years. Relaxation in individual case on merit may be made to the discretion of the competent Authority.

Transfer of administrative staff within the Regional Station of the institute can be made by the Directors of ICAR Institutes in public interest/administrative reasons.

Class III and Class IV employee of the Institute/Regional/Sub-stations will not be transferred for the reasons that they are ordinarily recruited by local advertisement or by inviting nominations from Regional

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Employment Exchange; unless their term of appointment provide for such inter-transfers."

6. Ld. Counsel for the applicant in this connection has placed reliance on the decision of this Tribunal dated 14.05.2013 in O.A.No. 364/12 (Debabrata Sahu vs The Secretary to Government, Ministry of Agriculture) wherein it has been held by this Tribunal that in the absence of any sanctioned post no transfer can be made. Accordingly, he would pray for allowing of this O.A.

7. Per contra, Ld. Counsel for the Respondents placed reliance on the counter and the annexures appended thereto would submit that the applicant is holding the post for all India transfer liability. He is holding a Group-B post and he has been transferred in need basis for administrative support of scientific activities going on RRC. He has been working in his present place of posting for 24 years without any transfer. Since there is no administrative staff at RRC, Vijayawada to discharge day to day function of administrative work and the Scientists are compelled and pressurized to do the administrative work, it was decided to transfer the applicant to Vijayawada in administrative exigency to meet the requirement there. It is the discretion of the authorities to transfer the administrative staff within the Institute and Regional Centre. At the place of the transfer of the applicant there was no administrative staff. The Regional Centre, Vijayawada having research programme of breeding and seed production of Fish-Pangassianodon hypothalamus and Impact Assessment of Exotic Species on Carp Culture, an employee holding a transferrable post cannot claim any vested right to work at a



particular place whenever such transfer is made in public interest or administrative exigency. As the transfer of the applicant is in administrative exigencies, the same needs no interference by this Tribunal.

8. In this connection, the Ld. Counsel appearing for the Respondents, has placed reliance on several decisions of the Hon'ble Apex Court but we do not see any reason to quote the same as it is a settled position of law that Courts and Tribunals cannot interfere in the order of transfer which has been issued in administrative exigencies or public interest but such interference is permissible whenever the order is proved to be passed in violation of any statutory/mandatory rules with malafide exercise of power. Accordingly, Ld Counsel for the Respondents would pray for dismissal of the O.A.

9. What we could understand from the discussions made above, the core question involved in this O.A. is as to whether the present transfer of the applicant is in public interest by administrative exigency or a punitive in nature.

10. When this Bench posed a specific query to the Ld. Counsel for the Respondents as to whether there was any vacancy at RRC, Vijayawada, in Assistant Grade, Ld. Counsel for the Respondents what has fairly informed has also given in writing in his notes of argument at paragraph 3, which is extracted hereunder for ready reference:

“3. That, taking into consideration the administrative exigencies, since the applicant has been transferred on public interest by the Director who is the competent authority to transfer, this Hon'ble Tribunal may not interfere in this case. It is further submitted that

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as has been alleged by the applicant that since he is posted at Bhubaneswar and there is no sanction post in RRC of ICAR-CIFA, Vijayawada, the order of transfer is illegal and in this regard it is submitted here that since there is no sanctioned post available at Vijayawada for the Asst. And for which the order of transfer has been passed for the smooth administration of the Research Centre. Hence, the Hon'ble Tribunal may not interfere in this case and may be dismissed."

11. From the above, it is clear that the transfer of the applicant to RRC, Vijayawada of ICAR-CIFA was not against the sanctioned post and, therefore, it can be presumed that same is by way of a punitive in nature. In this connection, we would like to place reliance on the decision of this Tribunal in O.A. No. 364/12, relevant portion of which is quoted hereunder:

11. In the present case, however, the facts of the transfer appear to be otherwise. The transfer of the applicant has been made to a place where the sanctioned post of Security Officer is not available. Even though it may be argued that the applicant should serve in any Institute of ICAR anywhere in India, as per the terms and conditions of his appointment, the normal administrative requirement is that there should be a sanctioned post for the applicant in the transferred place. The other factor which stands out is that even though there is only one post of Security Officer sanctioned for CIFA and admittedly, the main Institute requires tightening of security arrangement, the posting of Security Officer has been ordered to be handled by a Technical Officer of the Institute. Admittedly, the transfers are normal incidence of service. The controlling authorities have to take a decision for transfer of the officers and the employees in the best public interest. The decisions, however should not be guided by whims and caprice and transfer should not be made in contravention of the administrative rules and procedures. Respondents in their counter affidavit have pleaded that this case

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does not warrant "**any intervention by the Judiciary**". However, it is not a question of intervention. It is a question of following the administrative rules for making transfer and also make the transfer in public interest with due application of mind. Form the evaluation of the various points which have been submitted by the learned counsel for both the sides, it becomes evident to us that the matter of transfer of this applicant has not been addressed in strict conformity with the administrative rules and with due application of mind as to the best public interest. An employee in the organization does not have a right to continue to work at one particular place and is liable for transfer. He also cannot cite his personal inconvenience and family problems to continue to work in a particular place if the concerned administrative authorities find adequate administrative reasons for transfer of the employee from one place to the other. However, it is expected of the authorities to issue transfer order in conformity with the rules and regulations and in the best public interest.

12. Apart from the above, it also appears in the present case that the order of transfer has been used as punitive measure. If the authorities decided to go for a punitive measure, they have to follow the due procedure of considering the explanation of the applicant which had been called for and initiate appropriate disciplinary proceedings. Instead, they took recourse to an order of transfer as a disciplinary measure, which in our view is not an appropriate course of action.

13. The above view of ours gains support from the decisions of the Hon'ble High Court of Orissa in **Mamtaz Shariff Vs. United Bank of India Anr., 2008(1) OLR 46, Miss. Shantipriya Kar Vs. Director of Public Instruction (Schools) and Others, 55 (1983) CLT 132** and the decision of this Tribunal dated 20th January, 2013 in **OA No. 590/2012 (V. Satyanarayan Murty Vs. KVS)**.

14. For the reasons discussed above, the order of transfer dated 2.5.2012 (Annexure-A/6) is quashed.

In the result, the OA is allowed. No costs."

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Government employee is transferred from one place to the other as against the specific post. One can also be transferred in public interest along with the post, which is not the case here. Therefore, we have no hesitation to hold that the order of transfer cannot be termed as to have been passed in administrative exigency. Accordingly, the order of transfer is quashed. O.A. is allowed. No costs.


(A.K.PATNAIK)
Member (Judl.)

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