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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.458/2012

Jodhpur, this the 1st day of January, 2013

CORAM

HON'BLE Mr. B.K.SINHA, ADMINISTRATIVE MEMBER.

Sumer Singh Champawat
S/o Shri Ratan Singh, aged about 49 years,
R/o 5, Major Mod Singh Building Balniketan Road,
Ratanada, Jodhpur, at present
employed on the post of
Deputy Manager Marketing (on transfer)
Central Wool Development Board, Jodhpur.

: Applicant

(Through Shri P.S. Bhati, Advocate)

Versus

1. Union of India through the Secretary, Ministry of Textile, Udhog Bhawan, New Delhi.
2. Central Wool Development Board (CWDB) through its Chairman CWDB C-3, Shastri Nagar, Jodhpur.
3. Executive Director, Central Wool Development Board, C-3, Shastri Nagar, Jodhpur.
4. Shri K.K.Goyal, Executive Director CWDB, C-3, Shastri Nagar, Jodhpur.

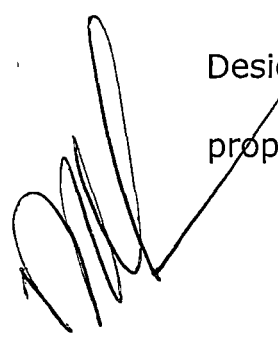
.....Respondents

(Through Shri Rakesh Arora, Advocate for R2to4)

ORDER

Per Hon'ble Mr. BK Sinha, Administrative Member

The instant OA is directed against an order transferring the applicant, Sumer Singh Champawat, Deputy Manager Marketing from Central Wool Development Board, Jodhpur, to Weaving & Designing Training Centre, Kullu, with immediate effect for proper implementation and monitoring of the Board's schemes in



different wool producing Northern States passed by the respondent No.3, K.K. Goyal, Executive Director, CWDB, Jodhpur,

Relief(s) sought:

2. The applicant has sought the following relief(s):

- "(i) That impugned order dated 29.10.2012 (Annexure-A/1 ordering to transfer of applicant, issued by the 3rd respondent, may be declared illegal, tainted with mala fide of respondent No.3 and the same may be quashed and set aside.**
- (ii) That the respondents may be directed to produce the relevant records/file containing noting leading to decision to pass the impugned order at the time of hearing of this case, for perusal by this Hon'ble Tribunal so as to unfold the true facts.**
- (iii) That any other direction, or orders, may be passed in favour of the applicant which may be deemed just and proper under the fact and circumstances of this case in the interest of justice.**
- (iv) That the costs of this application may be awarded."**

3. The applicant had also prayed for interim relief for staying the operation of the impugned order. Considering the fact that the applicant has been ordered to be relieved, it appears more expedient that the matter be heard and disposed of finally without taking recourse to intermediate measures of relief.

Case of the applicant:

4. The applicant was initially appointed on 16.01.1995 on deputation basis as Deputy Manager Marketing at Central Wool Development Board, Jodhpur, (hereinafter referred as CWDB) and was absorbed on the same post w.e.f. 01.04.1996. The CWDB has been constituted inter alia in July 1987 with its headquarter at Jodhpur, Rajasthan, for growth and development of wool and woolens, marketing intelligence, price stabilization, product development and advice to the Government on policy

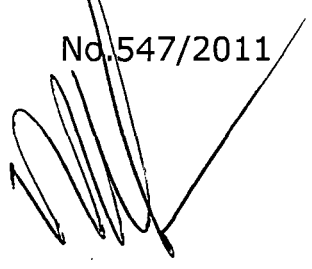
matters. The CWDB functions as an autonomous body under the Ministry of Textiles, Government of India, registered as a Society under the Societies Registration Act. There is a single post of Deputy Manager (Marketing) in the scale of Rs.2000-3500/6500-10500/9300-34800+GP 4600/- in the entire country established at Jodhpur Hedquarters at CWDB, sanctioned by the President vide order dated 10th July, 1987. The applicant figures as a prosecution witness in three separate cases instituted by the CBI against the former Executive Director, one Om Prakash for grave acts of corruption. The applicant has also cited instances of misuse of power and privileges by the respondent No.3, who has also been impleaded in his personal capacity as respondent No.4 because of personal malafide alleged against him. The Learned Counsel for the applicant has alleged that the present Executive Director [Respondent No.3] is a close friend of Om Prakash. It is on this account and also because the applicant adhere to rules and regulations and discharges his duties honestly that the Respondent No.3 carries a personal animus against him and has turned vindictive towards him. The applicant has further cited instances of illegal purchase of vehicle from CWDB's grant by the Rajasthan Veterinary College, Bikaner as implementing agency as diversification of funds for purposes other than that earmarked. The applicant had objected to such illegal unauthorised transactions in capacity of DDO from time to time

[paragraph 4.6 of the OA] giving rise to annoyance on part of the Respondent No.4 who prevailed to have the applicant

transferred to WDTC Kullu along with his post on 29.11.2010 while there is no rule in CWDB for transfer of an employee along with the post. No prior approval had been obtained for affecting this transfer from the Board of Directors and it did not fall within the domain of the Executive Committee. The applicant challenged this transfer before the Central Administrative Tribunal at its Jodhpur Bench vide OA No.02/2011. However, the respondents realized the error that they have committed and requested him to file a representation for cancellation of his transfer. The learned counsel for the applicant has submitted that he was prevailed upon to submit in writing that were his representation against the transfer to be considered favourably, he would withdraw the case pending with CAT at its Jodhpur Bench [A-8]. Accordingly, the transfer of the applicant had been cancelled vide the order dated 08.02.2011 for joining of CWDB Jodhpur after the withdrawal of the case [A/9]. The applicant filed MA No.42/2011 dated 08.02.2011 withdrawing the case, which was subsequently allowed [A-10].

5. The applicant has narrated a harrowing tale of woes that he had suffered at the hands of the respondent No.4. He has submitted a complaint to the CVC vide OM No.8(1)(h)/98 (1) dated 18th November, 1998 regarding the corrupt practices within the organization. The applicant has further alleged that he was compelled to proceed on leave due to the continued harassment and victimisation at the hands of the respondent No.4 [A-17]. He has further alleged that a leave for which he

had obtained prior approval was treated as unauthorised by concealing facts and recoveries were ordered from the salary of the applicant. The applicant was charged with having abandoned his headquarters without prior permission on 11.12.2010 and unauthorisedly remaining absent from duty till 18.02.2011. The entire period was treated as an unauthorised absence and was declared as leave without pay amounting to a break in service. The pay released for the above period was recovered in an installment of Rs.10000/- per month from the salary of December, 2011 onwards [A-I]. This was challenged by the applicant in form of an appeal stating that it had been wrongly imputed that he left the headquarters without permission from the competent authority. He had duly applied for leave and had left under intimation. The leave was not rejected at the time of his application and his increment was also sanctioned on 29.07.2011 indicating that the leave period had been duly counted for increment [A-18]. This appeal has not been disposed of to this date. The applicant has further alleged that he had been granted ACP under ACP Rules, 2009 from the scale of Rs.6500-200-10500 to Rs.10000-325-15200 based on promotional hierarchy on the basis of recommendation of the Screening Committee meetings held on 18.09.2006. This was subsequently withdrawn and the amount ordered to be recovered on the basis of a preliminary audit objection by AG, Rajasthan. In this regard, the applicant has filed an OA No.547/2011 before the Central Administrative Tribunal,



Jodhpur, which is pending for consideration. However, when the matter was clarified in form of a representation by the applicant to the AG Rajasthan, the preliminary objection was dropped [A-19]. Yet, the respondent No.4 wrote a DO letter to the Principal Accountant General, (Civil Audit) Rajasthan, Jaipur, requesting her to look into the matter and registering his protest at the withdrawal of the audit paragraph by AG [A-20]. The Principal AG in her communication dated 09.02.2012 to the respondent No.4 clarified that a reply had been received from the Board merely stating that the recovery would be effected without going into the facts. In the meantime, a copy of the OA No.547/2011 was also received, in which the facts had been adequately clarified. The AG took cognizance of the same and audit sub paragraph was settled on the basis thereof as the arguments and facts and documents received along with the OA were found convincing enough [A-21].

6. The applicant has further drawn attention of this Tribunal to the fact that he had submitted a petition before the Ministry giving a detail of the acts of omission and commission by the Respondent No.4. However, contrary to the established norms of administrative propriety the respondent No.4 had himself suggested the constitution of the team of enquiry which would go into the allegations leveled by the applicant against him [A-22]. As expected the enquiry report was a whitewash of misleads of the respondent No.4 as alleged by the applicant, who protested against process vide which the team of enquiry had

been constituted and the contents of the report seeking a fresh enquiry [A-23]. The applicant further alleged that the respondent No.4 filed a maliciously false and frivolous complaint against him to the Police, to which the applicant submitted a detailed reply, wherein the applicant referred to his being a prosecution witness in the CBI case and the mental and financial harassment that he has had to undergo at the hands of respondent No.4 [A-24]. The applicant enclosed copies of his notings to indicate as to how he has been striving hard to uphold the Rules at A/25, A/26 and A/27.

7. It was in this background that the impugned order of transfer was issued on 29.10.2012 transferring the applicant again to Kullu with immediate effect for proper implementation and monitoring of the Board's scheme in different wool producing states and relieved him from the office directing him to report WDTC, at Kullu. The applicant has strongly challenged that there is no administrative and public interest involved in his transfer, which has taken place on account of extraneous considerations other than administrative interest. In this regard, the applicant submitted a detailed representation on 31.10.2012 [A-28] to which there has been no reply.

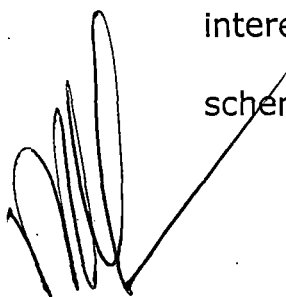
8. The applicant, in his rejoinder application has submitted that the transfer is outright illegal as no prior approval of the Government has taken for transfer of the post of Deputy Manager (Marketing). There is no marketing job or

infrastructure available and the sole intension behind undertaking his transfer is to remove the applicant from the headquarters. There is a ban on transfers and yet the applicant has been transferred out, which indicates deep rooted prejudice and malice on part of the respondent No.4. The applicant has repeatedly emphasised malice on the part of the respondent No.4, who has been personally impleaded as a party. The applicant further accuses the respondent for misguiding CAT as transfer of post to Kullu require the prior approval of the Ministry of Textiles, which has not been obtained in the instant case. The applicant has also contested in his rejoinder application that the respondents have realized the mistake they had made in ordering the first transfer and that is why they had withdrawn the same. The applicant has further submitted in his rejoinder application that the plan post of Supervisor/Assistant working at Kullu has already been transferred to Jodhpur. The respondents have incorrectly shown the post of Technical Officer at Jodhpur as no sanctioned Technical Officer post is available in CWDB organization anywhere. There is no post available at Kullu on which the applicant could have been transferred and entire ploy has been created just to remove him from the Headquarters leaving them free to commit irregularities at will as the last voice of protest would have been stifled.

Stand of the respondents

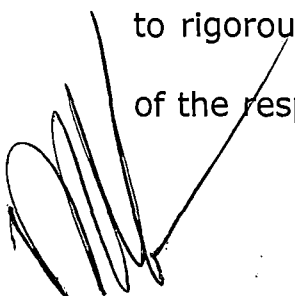
9. The respondents 2 to 4 have rigorously contested the OA. The respondent No.4, who stands impleaded in his personal

capacity, is represented. The counter reply and a caveat were filed on behalf of the respondents 2 to 4. The counter reply states that the Government of India had constituted Central Wool Development Board on 07.07.1987 with its Headquarter at Jodhpur (Rajasthan) as a Government Department under Ministry of Textiles, with 22 sanctioned posts. Initially all these posts were filled on deputation basis [R-7]. It has been made clear that all these posts were to be located at Jodhpur [Rajasthan]. The respondents have argued that the post of Deputy Manager (Marketing) and Wool Marketing Development Officer were not mentioned in the order of the Director, Ministry of Textiles dated 03.09.1987 at R-7,. Nowhere had it been mentioned in the documents of the Board that these posts were only meant for CWDB Jodhpur office. The respondents have also cited Section 10 of Recruitment and Promotion Rules, 1994 of the CWDB "**a person recruited to any post under the Board shall be liable for posting anywhere in India and Abroad**", and have asserted that any CWDB official can be transferred to any place in the Administrative interest for better and effective implementation of Board's scheme. The respondents have been at pains to emphasize that CWDB is a small organization of only 22 posts and it had been implementing scheme in all wool producing States of the country. It, thus, logically follows that any official can be transferred to any place in the Administrative interest for better and effective implementation of Board's scheme [Para 4.3 & 4.4 of the counter reply]. The respondents




have alleged that looking to the experience of the applicant and his positive and effective implementation of schemes, there is urgent need to transfer the applicant to WDTC, Kullu for proper inspection, monitoring and effective implementation of the Board's scheme. The counter reply further states that the applicant has been in habit of making baseless allegations against the Executive Director and other Superior officers, which were duly enquired into and found to be incorrect [*R-9; para 4.5 of the counter reply*]. The respondents have asserted that the transfer order has been issued after due approval of the competent authority and it does not suffer with any procedural or jurisdictional lacunae [*para 4.7 of the counter reply*]. The respondents have also brought to the notice of this Tribunal that when the Board was established, marketing of the wool and woolens had been prescribed as its main activity. In the year 1996, the Board was registered under Societies Registration Act and it was clearly mentioned in the Memorandum of Association thereof that the Board does not indulge in any commercial activity. Its focus, instead on development of wool and woolens by increasing quantity and quality of wool and woolens products. The transfer of the applicant has taken place in furtherance of these objectives and it cannot be questioned.

10. The learned Counsel for the respondents has been at pains to rigorously deny the allegations of malafide or malice on part of the respondent No.4. Referring to the allegation that the ACP



granted to the applicant had been withdrawn without having followed the due procedures, the respondents submit that the matter is sub-judice before this very Tribunal and, therefore, it cannot form a basis for inferring malafide. The respondents concede that complaints had been filed by the applicant against the respondent No.4, which were duly enquired by Committee constituted by the Ministry of Textiles and none of the charges were substantiated. There is nothing on record to prove that the respondent No.4 was friendly to Om Prakash, the former Executive Director, who is facing prosecution at the hands of the CBI. It was also submitted by the learned Counsel for the respondent that the applicant in his habit of making false allegation and nobody remains safe from his broadsides. He has made allegation against the past ED as also against the present ED and by insinuation against the Chairman as well. Merely because his proposals have not been concurred by the superior authorities does not imply that they bear some malice against him or that some irregularity is being committed. The issue of competence of ED to transfer has been discussed and upheld in the case of **Central Wool Development & Anr. v. Parbat Singh Champawat & Ors.,** in DB Civil Writ Petition No.2027/2011 decided vide order dated 10.03.2011. It is submitted that Kullu remains one of the prime wool producing areas and there is need for development of wool and woollens. The learned Counsel for the respondents relied upon the judgment in the case of **Shilpi Bose (Mrs) and Ors. v. State**



of Bihar and Ors. 1991 Supp.(2) SCC 659 to say that the right of the Tribunal to intervene in the transfer matters was indeed in very narrow compass. The Courts were precluded from such intervention until and unless specifically alleged were proved beyond reasonable doubt or some violation of statutes were to be established. Therefore, he strongly argued for dismissal of the OA.

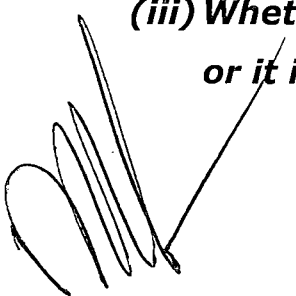
Cases cited

- (i) Shilpi Bose (Mrs) & Ors. v. State of Bihar & Ors. 1991 Supp.(2) SCC 659.**
- (ii) Parbat Singh Champawat vs. UOI & Ors., OA No.368/2010**
- (iii) CWDB & Anr. v. Parbat Singh Champawat & Ors., DBCWP No.2027/2011.**
- (iv) Sumer Singh Champawat vs. CWDB & Ors., OA No.02/2011.**

Facts-in-issue

11. I have carefully considered the pleadings of the parties, the documents adduced by them and the arguments submitted by their respective counsels. They have by and large adhered to their pleadings. On the basis of material above, the following facts-in-issue emerge for consideration of this Tribunal:

- (i) Is the Central Wool Development Board as an organization Jodhpur centric, as it has been asserted by the learned counsel for the applicant or it permits transfer to any part of the country?**
- (ii) Whether prior consent of the governing body of CWDB and the Ministry of Textiles have been taken for the impugned transfer order and whether the transfer suffers from procedural laches?**
- (iii) Whether there is mala fide involved in the transfer or it is free from the same?**




(iv) Whether the transfer is justified by the compulsions of the organization or it has been made along with post in order to shift the applicant out of Jodhpur?

(v) What relief, if any, can be provided to the applicant?

Is the Central Wool Development Board as an organization Jodhpur centric, as it has been asserted by the learned counsel for the applicant or it permits transfer to any part of the country?

12. In respect to the instant issue, it is an admitted fact that though the organization begun as a subsidiary office to the Ministry of Textiles, it is now a society under the Societies Registration Act. The Memorandum of the Association of the Board states: **"The name of the Society will be "Central Wool Development Board" herein after called "The Board" (An Organization under the Ministry of Textiles, Government of India). Area of operation will be all over India".** The aims and objectives of the organization are provided under Article 3 as follows:-

"3. The aims and objectives for which the Central Wool Development Board is framed are:

- (a) To promote the growth and development of wool and Woollen product;**
 - (b) Evolve an integrated approach to wool production and its utilization in the matter of formulation of schemes, extension work, implementation and evaluation of scheme aimed at augmenting wool production and upgrading the quality thereof;**
 - (c) To promote or undertake arrangements for better marketing and stabilizing the price of wool and products made thereof;**
 - (d) To promote standardization of wool and woollen products;**
 - (e) To propogate and/ or undertake measures for quality control for wool and woollen products;**
 - (f) To sponsor, assist, co-ordinate and encourage scientific, technological and economic research into the matters of animal husbandry practices, production**
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utilization and marketing of wool with a view to improve the quality, yield and utilization thereof;

- (g) To promote or undertake surveys/studies aimed at collection and formulation of statistics regarding wool, woollen products, employment and income potential in the sector;**
- (h) To propagate information useful to the growers and dealers of wool and manufactures of woollen products;**
- (i) To improve the existing market and develop new areas in the use of wool;**
- (j) To advise the Central Government on matters relating to the growth and development of wool including import and export of wool and products made thereof;**
- (k) To assist, promote, co-ordinate & harmonise the activities of various agencies including private and Non Governmental Organizations for development of wool and woollen products;**
- (l) To carry out such of the duties as may be prescribed from time to time;**
- (m) Board will not work for profit and commercial purposes."**

13. It is to be seen from this that 3 (i) relates to development to the existing market and new area in the usage of Board. It is of course, true that Article 2 of the Memorandum of Association of the Board provides that the registered office of the Board shall be at Jodhpur (Rajasthan). The Board is entrusted with the duty assigned under Article 3 of the Memorandum. However, because of the fact that wool and woollen products are available in heaviest concentration in the Marwar region, the headquarters of the Board was located at Jodhpur. However, there is nothing in the Memorandum of Association to indicate that the scope and expense of the organization lacks in all India perspective. While the learned Counsel for the applicant is correct in holding that since sheep corporation has the highest density in this region of the country and there is a large community of persons dealing in these as well as processing facility, the focus of the organization is at Jodhpur. However, to say that focus excludes the rest of

the country is not substantiated by Rules or facts or the policies been followed by the Board.

Whether prior consent of the governing body of CWDB and the Ministry of Textiles have been taken for the impugned transfer order and whether the transfer suffers from procedural laches?

14. With respect to the instant issue under consideration, it would be appropriate here to deal with the powers and functions of the governing body. The applicant has alleged that transfer of a post could only take place with the prior approval of the governing body and the Ministry of Textiles. The instant transfer has been made by the Executive Committee without having obtained the authorization from the affair two bodies, and therefore, is void ab initio lacking in the necessary mandate. The functions and powers of the governing body have been mentioned under part II of the Rules and Regulations of the Central Wool Development Board, it provides:

"(A) The Governing Body shall have the following powers and functions, namely to:

- (i) Observe the provisions of the Memorandum of Association, these rules and such instructions of Government of India, as may be issued from time to time;***
- (ii) Exercise general control and issue such directions for the efficient management and administration of the affairs of the Board as may be necessary;***
- (iii) Recommend creation of all posts irrespective of scales of pay for approval by the government of India and make appointments thereto in accordance with the Rules and Regulations of the Board;***
- (iv) Nominate members of the Executive Committee in accordance with rules;***
- (v) Approve the annual budget of the Board;***
- (vi) Consider and approve the annual report of the Board;***
- (vii) Consider the balance sheet and audited accounts of the Board;***
- (viii) Add and amend the Rules of the Board;***

- (ix) *Frame bye-laws, rules, regulations etc. not inconsistent with these rules, and the memorandum of Association for the management, administration and regulation of the business of the Board for the furtherance of its objects;*
- (x) *To perform such other functions as are entrusted to it under these rules;*
- (xi) *The Governing body may by resolution delegate to its Chairman, Vice-Chairman, to any other Committee, or to the Executive Director or to any other officer of the Board, such of its powers for the conduct of business as it may deem fit."*

15. It is evident from the above article that the governing body is to exercise general control over the functioning of the organization and issue direction for efficient management and administration of the affairs of the Board, as may be necessary. A number of other functions also have been assigned to the governing body under these rules but nowhere has it been provided that it shall approve the transfer order being made by the executive committee. The powers of Executive Committee have also defined, as hereunder:

"(i) Subject to the general control and directions of the Governing Body, the Executive Committee shall be responsible for the management and administration of the affairs of the Board in accordance with these rules and the by-laws made there under for the furtherance of its objects and shall have all powers which may be necessary or expedient for the purpose.

(ii) Without prejudice to the generality of the foregoing sub rule, the Executive Committee shall have the following functions, namely:-

- (a) to prepare and execute detailed plan and programme for the furtherance of the objects of the Board;***
- (b) to draw up the annual budget of the Board to be submitted for approval of the Governing Body;***
- (c) to scrutinize and approve the annual report and balance sheet and audited accounts of the Board for the consideration of the Governing Body;***
- (d) to lay down terms and conditions governing scholarships, fellowships, deputations, grants-in-aid, research schemes and projects;***


(iii) The Executive Committee may by resolution delegate to its Chairman, or to the Executive Director or to any other officer of the Board, such of its powers for the conduct of business as it may deem fit, subject, if deemed necessary, to the condition that the action taken by its own Chairman, or the

Executive Director or other officers under the powers so delegated to him shall be subject to confirmation at the next meeting of the Executive Committee."

16. It has been further provided under the powers and functions of Executive Director that subject to any order that may be passed by the Government of India, the Chairman, the Vice Chairman and decisions of the Executive Committee, the Executive Director as the Chief Executive officer of the Board shall be responsible for prescribing the duties of all officers and employees of the Board.

17. On the other hand, the Rule 10 of the Wool Development Board (Recruitment & Promotion) Rules, 1964 clearly lays down ***"10. Liability for Transfer- A person recruited to any post under the Board shall be liable for posting anywhere in India or abroad."*** This provision clearly lays to rest the association of the applicant in respect to issue No.1 that the organization being Jodhpur centric no transfer can be made out outside Jodhpur. It is further corroborated by the findings of the Hon'ble High Court of Judicature at Rajasthan, Jodhpur in DB Civil Writ Petition no.2027/2011, the Hon'ble High Court has been very categorically held as follows:

"In our opinion, the tribunal has approached the case as if the entire transfer of the Board was necessary from Jodhpur to Bikaner and has centrally focused the decision on this issue alone. There was no jurisdiction with the tribunal to advise the Ministry to transfer the Board itself from Jodhpur. Therefore, the entire approach of the tribunal has been vitiated. It was open for the employer to transfer the employee alongwith the post considering the importance of Bikaner and to explore the possibility as decided by the executive committee and Board and the orders have been passed by the competent authority. The decision of the executive committee has also been approved by the governing body."



Whether there is mala fide involved in the transfer or it is free from the same?

18. In so far as this issue is concerned, the principal ground for alleging malafide by the applicant have also been covered while dealing with their respective arguments. It is nevertheless appropriate to deal with them one-by-one in chronological order. The term malafide has been discussed in a number of judicial decisions by the Hon'ble Supreme Court. Before we enter into the question that whether allegations of malafide can be sustained against the respondent No.4, I deem it necessary to go into what constitutes malafide. As per Tomlin's Law Dictionary "**Malafides is opposed to bonafides and applies to the case of a person who possesses property not his own, and which he knows, or might on reflection know, not to be his own.**" In the case of **State of Punjab and Another vs. Gurdial Singh and others, (1980) SCC 471** the Hon'ble Supreme Court has gone into the issue of definition of malafide. The Hon'ble Supreme Court has held as follows:

"9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and often times overlaps motives, passion and satisfactions- is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the Court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated; "I repeat.... that all power is a trust- that we are accountable for its exercise- that, from the people, and for the people, all springs and all must end designed. Fraud in

this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action mala fides or fraud on power vitiates the acquisition or other officer act."

19. In the case of **C. Ramanathan vs. Acting Zonal Manager, FCI, Madras and Others**, (1980) 4 FLR 385, the Hon'ble Supreme Court has held as follows:-

"7. Courts are chary to interfere with an order of transfer made for administrative reasons. An innocuous order of transfer, which not only on the face of it appears to be one made in order to further the administrative interests of an organisation, but which even on a deeper scrutiny does not pose any irregular or mala fide exercise of power by the concerned authority, is generally upheld by Civil Courts, as Courts cannot substitute their own opinion and interfere with ordinary orders of transfer of employees of established organisations. But if in a given case, an order of transfer appears to be a deliberate attempt to bypass all disciplinary machinery and offend the well known principle of audi alteram partem if ex facie it is clear that the order of transfer was not made for administrative reasons but was made to achieve a collateral purpose, then it is open to the Court to crack the shell of innocuousness which wraps the order of transfer and by piercing such a veil, find out the real purpose behind the order of transfer. No doubt, a normal order of transfer can be misunderstood as a punitive measure. But if the circumstances surrounding such an order lead to a reasonable inference by a well instructed mind, that such order was made in the colourable exercise of power and intended to achieve a sinister purpose and based on irrelevant considerations then the arm of the Court, can be contended so as to decipher the intent of the order and set it aside on the ground that it is one made with a design and motive or circumventing disciplinary action and, particularly when a civil servant is involved, to avoid the stringent but mandatory procedure prescribed in Article 311 (2) of the Constitution of India."

The Court in that case after considering the pleadings held that"

"We are satisfied that the order was passed for a collateral purpose and not for an administrative convenience in the public interest. We are, of course, conscious of the fact that innocuous and normal orders of transfers ought not to be interfered with by Courts if it was made for administrative exigencies or for other valid reason but as in our view the order in question was passed by the disciplinary machinery and in order to avoid a fair opportunity being given to the appellant to explain his alleged misconduct. We are constrained to interfere in the instant case. Having regard to the specific allegations made in the counter affidavit by the first respondent, we are going behind the apparent reasons given in support of the order of transfer and after appreciating all the circumstances in the case, we are of the view that the order of

transfer apparently was meant really to impose a punishment on the officer concerned. It appears to us to be colourable exercise of power or an exercise of power surcharged with bad faith as irrelevant consideration motivated the passing of the challenging order. Instead of taking disciplinary action against the appellant, this order of transfer has been made in order to circumvent the prescribed process in an action ordinarily undertaken against the Government servant for misconduct."

20. The Hon'ble High Court of Madhya Pradesh has held in the case of **Shishir Raizada vs Union Of India (Uoi) And Ors.**, 2008 (2) MPHT 54, in its judgment dated 21 January, 2008, as follows:-

6. Tribunal while dealing with the plea of malafides has rightly come to the following conclusion-in Para 10 of its order:

In this regard we have perused the decisions rendered in 2006(5) Supreme Today 92, P.K. Jha v. State of Jharkhand and (2005) 8 SCC 760, Union of India v. Ashok Kumar, wherein the Hon'ble Supreme Court has clearly held that it is well settled that whenever allegations of malafide has been alleged sufficient and cogent material making out prima facie case must be set out in the pleadings. The plea of malafide advanced on behalf of the applicant is not very much convincing. Merely on the ground that the respondent No. 4 has not filed any counter reply denying the allegations contained in the Original Application would not reach to the conclusion that whatever has been stated therein is gospel truth. The allegations of malafide are not supported by any material document it is true that the person against whom malafide has been alleged has been made a party in the proceedings but at the same time the plea of malafide must be specific. The burden is very heavy on the person who alleges malafide and malafide can be established either by direct evidences or can be deduced from proved facts.

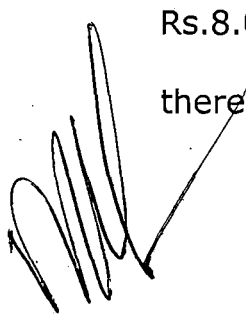
7. It is the settled law that so far as the challenge to the transfer order on the ground of malafides is concerned, the employee concerned is required to place on record strong and clinching material in support of his plea of malafides.

8. While dealing with the challenge to transfer order on the ground of malafide Supreme Court in the case of State of U.P. and Ors. v. Gobardhan, has held that:

8. ...even allegations of malafides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures and surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

9. In State of U.P. and Anr. v. V.N. Prasad 1995 Supp. (2) SCC 151, the Supreme Court has expressed that the presumption is in favour of the bonafides of the order unless contradicted by acceptable material. Strong and convincing evidence is required to establish the plea of malafides. The view of the Supreme Court in Rajendra Roy v. Union of India, is that it may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of malafide action from the pleadings and antecedent facts and circumstances but for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestion.

21. I now proceed to examine the facts adduced by the applicant on the basis of which allegations of malafide have been based. It is incontrovertible fact that the applicant appears as a prosecution witness in a case of corruption in which the previous Executive Director, one Om Prakash is being prosecuted. The arguments of the applicant are that Om Prakash and the respondent No.4 have been close friends and as such the latter is acting in a vengeful manner against the applicant. One here has to take notice and admit that the applicant has been consistent in raising the issue relating to order and transparency in government dealing. It was on this account that the previous Joint Secretary (Wool), Government of India had considered his representation against his transfer to Kullu and while allowing the cancellation, had observed "**he has much required integrity to be in CWDB, Jodhpur.**" The applicant has alleged that till 08.11.2010 he had been looking after Government Schemes, Account Section, Budget, Stores and Legal cases independently and during 2010-2011 sanctions worth more than Rs.8.00 crores were processed and issued by him. He was, thereafter, transferred to Kullu on 29.11.2010,



which was cancelled 82 days later. Yet, despite the standing orders, neither the correspondence files relating to the aforesaid duties were routed through him nor he was involved in the decision making process. The applicant has alleged installation of web cameras in front of his office to keep a watch on the employees, who report to him **[A-12; page 48 of the OA]**. This is further corroborated by the fact that the applicant has kept a track of being file sent to him and had enclosed a list of all the files that have been dealt by him, the applicant submits **[Annexure-A/11 page 41 of the OA]**. It appears from a cursory perusal that the applicant remains curiously underworked. The applicant has also enclosed his assessment submitted by United Nations Volunteers, a reference form at Annexure-A/2 states as follows:-

"His technical knowledge is sound. He is excellent in capacity to train, help and advise the staff and ability to handle his subordinates and other peoples. His proposals are consistently sound and well thought of. He is extremely reliable in quality of work, very prompt in disposal of work. Exceptional in intelligence and understanding and clear grasp of any matter however complicated. His organizational capabilities and ability to grasp are excellent. He is extremely responsible, reliable and hard working man. Shows exceptional zeal and devotion to work and has excellent initiative."

22. It is significant to note that at no place have the respondents raised even of iota of doubts regarding the integrity or the efficiency of the applicant. In fact the note which processed the transfer of the applicant to Kullu for the second time states as follows:

"It was also emphasized in the CBI, FIR No.16, that instead of deputing other officers, Senior officer of CWDB such as Wool Marketing Development Officer (WMDO), Dy. Manager (Marketing) DMM who are dealing with Schemes of the Board, are fully aware of scheme guidelines and are experienced and

technically qualified for implementation/ monitoring of Boards scheme be deputed for implementation & proper monitoring of Board's schemes. Dy. Manager (Marketing), was serving as Jr. Technical Assistant and was appointed as Research Assistant (a technical post) in CWDB on deputation basis. He has sound knowledge & good experience in providing services related to Testing facilities and Board's schemes and their implementation."

23. Despite these generous admissions of efficiency and integrity of the applicant there appears much substance in the allegation of the applicant that he was not assigned work to his capacity and that the authorities were more than anxious to get rid of him at the first instance. As regards the first transfer of the applicant to Kullu on 29.11.2010 and cancellation in 82 days thence is shrouded in mystery. The respondents had claimed that the transfer was done in the interest of the efficiency of the organization and for better monitoring, but keeping the personal difficulties of the applicant in mind the same has been cancelled. This transfer now reappears on 29.10.2012. The order of cancellation of the transfer order dated 08.02.2011 reads as under:

"With the approval of competent authority following transfer order is issued

Shri Sumer Singh Campawat, Dy. Manager Marketing/ Kullu is transferred from WDTC, Kullu to CWDB, Jodhpur on his own request subject to withdrawal of the Court case unconditionally before joining at CWDB Jodhpur."

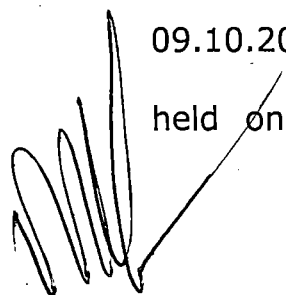
24. This cancellation does not bear out that it is intended to be a short term punishment and the incumbent is likely to be re-transferred to Kullu. The note of the ED on the basis of which the transfer was obtained from the Chairman does not go into the factum of previous transfer of the applicant and under what

circumstances it had been rescinded. The note submitted by the ED to the Joint Secretary (Wool) also omits to go into this factor. To the contrary any proposal to this effect should have logically dealt with the history of the last transfer, the court case and the circumstances which led to the transfer order being rescinded. It appears from the note as if this were a first time transfer which appears quaint under the circumstances. It further leads to an inference that there was an anxiety to circumvent the episode of the previous transfer lest it creates complications and the proposal may not carry. This lends credence to the allegations leveled by the applicant.

25. Now, I take up the issue of the reversal of the ACP scale granted to the applicant. Admittedly, the II ACP was granted to the applicant on the basis of recommendations of the Screening Committee, which states as follows:

"Sh. S.S. Champawat was appointed on 14.11.1985. He has got on (1) upgradation on 16.01.1995. If the benefit of ACPs is considered w.r.t. his initial appointment, he is eligible for II ACP w.e.f. 14.11.2009 (deferred by 126 days on account of EOL without MC). Since he has been absorbed in the higher post, his appointment at the post of Dy. Manager (marketing) may be taken as fresh appointment w.e.f. 01.04.1996 and in consideration of this, he is eligible for first ACPs w.e.f. 01.04.2008 from S-12 to S-13. He is not eligible for ACPS as on date."

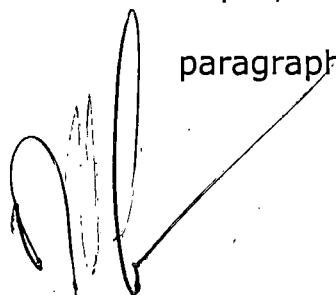
26. The applicant contested the aforesaid observations and the same note of the Ministry goes ahead to record that he submitted relevant clarifications issued by DoPT on ACP/MACP Rules. He had also enclosed along with his representation dated 09.10.2010, a copy of the Minutes of the Screening Committee held on 06.12.2006 under the chairmanship of Chairman,



CWDB. The said Screening Committee recommended ACP to S.S. Champawat w.e.f. 16.01.2007 to the pay scale of Rs.10000-15200. The note of the Ministry further goes ahead to record that CWDB also issued order implementing the recommendation of the Screening Committee vide letter dated 23.04.2007. However, CWDB while clarifying the queries of Ministry from time to time has not mentioned about aforesaid Screening Committee meeting and their recommendations etc. and clarified position based only on observations (not recommendation) made by the Screening Committee held in Ministry in 2006. [page 67 of the OA] [A-19]. After having considered the matter in detail, the office note recommended as follows:

"In view of above position of rules, CWDB order dated 29.11.2011 granting first ACP to Sh. S.S. Champawat in PB-2 of Rs.9300-34800/- with grade pay of Rs.4800/- is not in order as he is entitled to PB 3 of Rs.15600-39100/- with Grade Pay of Rs.6600/- w.e.f. 16.01.2007. Accordingly, we may advise CWDB to revise their ACP/ pay fixation orders dated 29.1.2011 to grant Sh. S.S. Champawat his first ACP under ACP Rules, 1999 in PB 3 of Rs.15600-39100/- with Grade Pay of Rs.6600/- w.e.f. 16.01.2007 and re-fix his pay accordingly to CCS (Revised) Pay Rules, 2008."

27. This issue had been raised in form of an audit paragraph. In the meantime, the applicant came before this Tribunal in OA No.02/2011. It appears from the record that the recovery was initiated against the applicant on the basis of the audit para in January 2011. Subsequently, on 12.01.2012, the AG settled the audit para. In this regard, the respondents No.4 has addressed a strong DO letter to the Pr. Accountant General (Civil Audit), Jaipur, Rajasthan dated 31.01.2011 [A-20]. The last three paragraphs of which need to be cited here:



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"But suddenly on 12.01.2012; Board has received another letter No.IC-III/2758 dated 12.01.2012 from your Office stating that above Para related to recovery of excess payment is cancelled.

It is very surprising or rather shocking that an Audit Para which was raised by your office in Jan.2011, and for which recovery was started by our office and even your office was directing us till 16.12.2011 to continue the recovery and on the matter which is sub-judice, suddenly withdrawn and cancelled by your office on 12.01.2012 without verifying the record from Board or even consulting the Board which was unheard of in my nearly 18 year of Central Govt. service.

I would, therefore, request you to kindly look into the matter personally including the withdrawal of the letter issued on 12.01.2012 (canceling above audit Para) as it have come to notice that concerned staff had directly approached your office and on the same version, the above Audit Para have been cancelled/ withdrawn."

28. The reply of the Principal Accountant General is equally revealing and been reproduced in full:-

"1. The audit team, while conducting the audit from 9.12.2010 to 29.12.2010, issued a Preliminary Audit Memo No.15 dated 28.12.2010 to the Board regarding incorrect fixation of pay in respect of Sh. S.S. Champawat (Assistant Marketing Manager) and incorrect fixation of pay, retirement benefits and LTC claim in respect of Sh. P.S. Champawat (Wool Marketing Development Officer). The observation remained un replied.

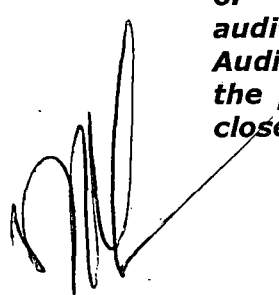
2. In absence of the Board's reply and relevant facts and documents, para 9 (1) in respect of Sh. P.S. Champawat and 9 (2) in respect of Shri S.S. Champawat was issued in the Inspection Report dated 29.03.2011.

3. The reply to above IR was received on 11.11.2011. In reply to para No.9, the Board intimated that the recovery of the irregular payment as pointed out by audit, shall be made from the salary of 11/2011. As no other details, facts or documents were furnished along with the reply for scrutiny. Audit asked (26.12.2011) to intimate the progress of the action to audit.

4. This office received an OA No.547/2011 filed before Hon'ble Central Administrative Tribunal (CAT) by Sh. SS Champawat against the recovery of the amount from his pay. The facts, arguments and documents attached with the OA were examined in detail in consultation with the administration wing of this office.

5. Based on the facts, documents and provisions of Rules available in OA No.547/2011, sub para 9 (2) was settled on 12.01.2012.

6. It is a common practice in audit to issue preliminary audit memos on the irregularities noticed during the audit. The Audited entity is required to respond to the observation so that the point can be examined by the audit and action either to close or convert it into IR para can be taken.

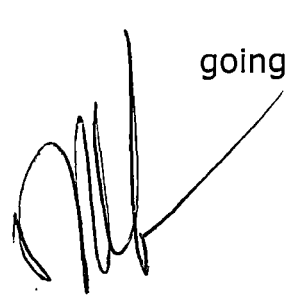


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7. In case any facts or documents subsequently came to the notice which are material to its earlier findings/conclusion/interference, Audit considers them for retaining or settling the issue.

8. In this particular case the facts/documents that came for scrutiny through the OA, the audit reviewed the observation and accordingly the sub para was settled as the arguments and facts/documents received along with the OA were convincing enough to settle the issue."

29. It has been rightly observed by the AG that the audit paras are raised as a matter of course during the audit. It is a normal practice that the audit entity responsible to the observations which is again examined by the audit, which has the option either to drop the para and settle the issue or to process with a para and recommend appropriate action. Since the matter also deals with the rights of an individual whose salary stands to be reduced the Principle of *audi altram partem* demands that he should also given an opportunity of making a representation which would then be considered by the audit team. Here prima facie, it appears from Para 3 that the CWDB immediately swung into action making recovery without giving an opportunity of the party being heard and following this, it was on the representation of the applicant and the documents submitted by him, the re-audit para came to be settled. Without making any further judgment on the merits of the case, since this matter has been principally in issue and has been alleged, contested and denied, it may be at best treated as obiter dictum. However, I feel that the issue of mala fide cannot be examined fully without going into this factor. The infernal hurry to rescind the ACP



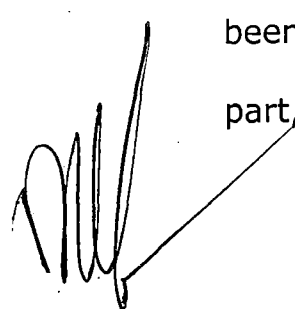
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granted and to make deductions of the amount paid is more than self evident.

30. Another point which has been alleged is a matter of recovery from the applicant on account of unauthorized leave. In this regard, the applicant has already stated that he was asked to proceed on leave and has enclosed the leave application. The applicant has submitted in his OA at para 4.16 as under:

".....he has inter alia, narrated that the applicant was being pressurized to proceed on leave and transfer of work (cop of leave application mentioned reasons for leave applied which duly marked by 3rd respondent is Annexure-A/17 because of his adhering to the rules and for not deviating from his duty as well as not give noting as per the desire of 3rd respondent and harassing the applicant by passing illegal orders regarding withdrawal of ACP and arbitrarily imposed the penalty of treating the leave unauthorized and ordering recovery from pay against the rules for indefinite period while other side such proposal was disagreed by than competent authority (shri V. Srinivas, Chairman CWDB/JS MOT), however, 3rd respondent has get approved similar proposal from present JS MOT/ VC CWDB after about two year by hiding previous noting comments of JS MOT / Chairman CWDB and started recovery without any enquiry as per conduct rules. The applicant has represented through filing an appeal in this matter before the Chairman CWDB which is pending since long period and not disposed as yet within period allowed in conduct rules of CWDB. Copy of appeal dated 30.12.2011 is self explanatory and attached as Annexure-A/18."

31. The applicant had clearly stated in his representation that he had left the headquarters under intimation to the Executive Director, CWDB vide fax No.2859 dated 10.12.2010 on medical ground. Subsequently, his transfer for Kullu has been cancelled and he was allowed to join duty at Jodhpur on the completion of his leave. I find much merit in the contention that had there been any objection to his leave or any prejudice of rules on his part, his salary should have been withheld at that time and he



should have to join at that time. The action being taken to get this period declared as unauthorized leave without pay and commenced recoveries, on the fully endorse the view of the applicant as an afterthought. There is also merit in the contention of the applicant that this period was counted for his increment and the fact that the recovery has been started after a gap of 12 months, clearly reflects malice on part of the authority. Having released the pay and the increment based thereon, the law of estoppel will apply against the respondent in acting otherwise.

32. I summarize, on very careful consideration that there is a good deal of material available on records which indicates that there is hostility and element of vendetta in the conduct of the respondent organization. As the Executive Director of the organization, the respondent No.4, cannot forsake its own responsibility.

Whether the transfer is justified by the compulsions of the organization or it has been made along with post in order to shift the applicant out of Jodhpur?

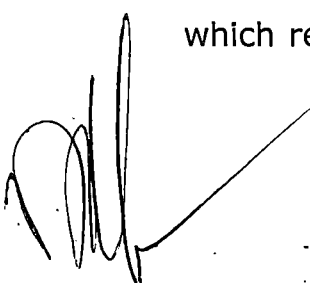
33. In respect to this issue, I have gone through the proposal for shifting for transfer of the applicant for the second time. I find that it has been provisionally made. If the transfer is being made in the interest of exigency, it would have necessary to define the area supported by the relevant statistic as to how much wool production is there in Kullu; what is wool production in other competing centres; while Kullu has been picked up as a

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destination for posting the applicant; what would be his precise field of work; how many products are being carried out there; what durable are expected as a outcome from this posting; what are the mile stone which are covered by him in his field of work etc. These are only some of the points that ought to have been examined there could be other parameters of management that have remained unstated. In absence of these parameters being defined the proposal remains a good piece of literature but a poor management exercise. I find that the notings omit this issue and deal with the subject in a summary manner. The issue of first transfer has already been discussed in respect to issue No.4 and has not been fully covered in the pleadings of the either parties. However, in the light of the finding in the previous issue, I remain totally unconvinced regarding the stated imperatives of transfer which has not adequately been supported by facts.

What relief, if any, can be provided to the applicant?

34. The learned Counsel for the respondents has relied upon the case of ***Shilpi Bose (Mrs) and others v. State of Bihar and others***, reported in 1991 supp (2) SCC 659, to emphasize that the judicial intervention is limited. This has already been well acknowledged while starting the treatment of the previous issue and the boundaries have been carefully defined. In view of the findings in the last two issues, there has not much left to say. One has to look to the general environment of the country which reflects and overwhelming concern with issues of integrity



and transparency in public services and public life. I can hold after having rendered 39 years of service in the Government with the Government of India and State Governments that the capacity to stick to rules and regulations and to hold once own against superior orders is a fast disappearing quality. I have not the least hesitation to conclude that the applicant has stuck to the rules and regulations and raised issues of propriety even against heavy odds. This appears to be a battle between David and Goliath. The law necessarily has to intervene on the side of the injured which in this happens to be the applicant. I cannot but help to echo in dwell known couplet by noted a Urdu Poet Nida Fazli: 'जिन चिरागों को हवाओं का खौफ नहीं उन चिरागों का हवाओं से बचाया जाए।' "The lamps which have no fear of the gusts should be protected from such gusts of wind." I am fully aware that the legal proceedings are governed by the cold logic of law and not by sentiments. In this case, the logic and law lies heavily on the side of the applicant as does the sentiment. In view of this aforesaid discussion, it is hereby directed that :

(i) the impugned transfer order dated 29.10.2012 [A-1] in respect of the applicant is hereby quashed.

(ii) There shall be no order as to costs.

35. Accordingly, the OA is allowed as stated above.


[B.K.Sinha]
Administrative Member

RSS

