

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 483/2013

Reserved on : 27.07.2015

Jodhpur, this 18th the August, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Subhash Srivastava S/o Sh. B.B.L.Srivastava, aged about 54 years,
R/o Near Ramdev Tent House, Rani Bazar, Bikaner, Rajasthan.
Presently working on the post of T-3 in the office of Central Sheep
and Wool Research Institute, Bikaner, Rajasthan

.....Applicant

By Advocate: Mr. S.K.Malik

Versus

1. The Indian Council of Agricultural Research through its Secretary, Krishi Bhawan, New Delhi 110 114
2. The Director, Central Sheep and Wool Research Institute, Avika Nagar, District Tonk, Rajasthan
3. The Assistant Administrative Officer, Central Sheep and Wool Research Institute, Avikanagar, District Tonk, Rajasthan
4. Dr. R.K.Sawal, Principal Scientist, Central Sheep and Wool Research Institute, Arid Region Campus, Bikaner, Rajasthan

.....Respondents

By Advocate : Mr. A.K.Chhangani

ORDER

In this OA filed u/s 19 of the Administrative Tribunal Act, 1985, the applicant has prayed for the following reliefs:-

- (i) By an appropriate writ order or direction impugned order dated 05-08-13 at Annx.A/1 and impugned order dated 22.10.13 at Annx.A/2 be declared illegal and be quashed and set aside with all consequential benefits.
- (ii) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice.

2. Brief facts of the case, as averred by the applicant, are that the applicant was initially appointed, after calling names from local Employment Exchange Bikaner, on the post of Lab Tech T-1 w.e.f. 25.03.1988 vide office order dated 11.04.1988 and after joining, he has been continuing at Bikaner. It has been further stated that persons junior and senior to the applicant are still working in Bikaner from the date of their appointment. The applicant has further stated that respondent No.4 was given the charge of Officer Incharge of the department and he forced the applicant to do the work which he was not supposed to do and used unparliamentary language due to which applicant went to depression, but despite that he did the job which respondent No.4 ordered. Further, against the said act the applicant made a complaint dated 07.05.2010 (Ann.A/3) before the competent authority. The applicant also made representation dated

09.07.2012 (Ann.A/4) before the respondents through proper channel for reconsideration of his promotion case highlighting rules and circulars of the department and clearly stated that he has never been communicated any adverse remarks, but despite this his case has not been considered for promotion for higher grade. So far no reply has been given by the respondents with regard to complaint dated 07.05.2010 and representation dated 09.07.2012. It has been averred that rather on complaint and representation, with malafide intention, the applicant has been ordered to be transferred to a far of place Garsa (Kullu, H.P.) vide office order dated 16.4.2013 (Ann.A/5) and no person has been posted to ARC, Bikaner. Aggrieved of the impugned order dated 16.4.2013, the applicant made representation dated 17.4.2013 (Ann.A/6) for cancellation of transfer as his wife is serving as Teacher in Government of Rajasthan and she is suffering from chronic disease since last 10 years. She has to be kept under supervision of specialized physician and his two children are studying in IX and XII standard. Further his old age parents are suffering from cardiac ailment and need his help and extra care and supervision. His brother has recently died and due to sad demise, his parents are in mental agony and tension. The applicant has further stated that he is Group-C employee recruited through Local Employment Exchange and is not liable

permission of ICAR HQ is necessary. Moreover, the complaint of the applicant is still pending and on the recommendation of respondent No.4 the transfer has been made with malafide intention, otherwise the letter dated 15.01.2002 (Ann.A/7) issued by respondent No.1 to the Director of all the institutes with regard to transfer of Group-C and D staff is very clear. The applicant has further stated that without considering his representation of 17.04.2013 (Ann.A/6), vide order dated 30.4.2013 (Ann.A/8), he was ordered to be relieved from the post immediately. Earlier, aggrieved of transfer order, the applicant filed OA No.204/2013 before this Tribunal and vide order dated 30.5.2013 this Tribunal quashed the transfer order and relieving order and the respondents were directed to consider the representation and forward the same to the competent authority, but the respondents vide impugned order dated 05.08.2013 (Ann.A/1) without any application of mind and without considering the points raised in OA and representation, did not cancel the transfer order and ordered to relieve him from the post to join at NRTS Garsa (Kullu, H.P.). Thereafter the applicant had made representation dated 29.08.2013 and 07.11.2013 (Ann.A/11 and A/13) highlighting his grievance but the respondents are compelling the applicant to join at Garsa (Kullu, H.P.). The applicant has also alleged that while some other persons have been adjusted at Bikaner and

and no heed is being paid to the points raised in his representation, therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for the reliefs as stated above.

3. In the reply to the OA, the official respondent while raising preliminary objections to the maintainability of the OA have stated that the applicant was initially appointed on the post of T-1 (Laboratory Technician) w.e.f. 25.3.1988. As per the offer of appointment dated 14.3.1988 (Ann.R/1) especially condition No.4, he is well aware that he is liable to serve in any Institute or office of the Indian Council of Agriculture Research (ICAR) located anywhere in India. So far the allegation of the applicant that he has been transferred against the guidelines and that Group-C and D staff of ICAR recruited through local Employment Exchange are not subject to transfer and in case the transfer is unavoidable, then prior permission is necessary, the respondents have submitted that prior permission was taken from the ICAR Hqrs., New Delhi by the CSWRI for transfer of Group-C staff as per instructions issued vide ICAR letter dated 15.1.2002. The CSWRI had written a letter dated 28.03.2013 (Ann.R/2) to ICAR, New Delhi and obtained 'No Objection' vide letter dated 08.04.2013 (Ann.R/3) to transfer the applicant. With reference to allegation that he made a complaint against the office incharge of the

Department on 7.5.2010 and was therefore, transferred, it has been submitted that the same has no relevance because that complaint is of May, 2010 almost 3 years prior to the transfer. It has also been submitted that the applicant was not given promotion to the higher grade because he was not fulfilling the requisite benchmark criteria and this fact was informed to the applicant. The respondents have further submitted that transfer of the applicant has been made by the competent authority in public interest. The competent authority having power to pass the order has made the transfer of the applicant and hence no question of malafide arises. The respondents have placed reliance on the judgment of the Hon'ble Supreme Court in the case of Union of India and Ors. vs. S.L.Abbas, JT 1993 (3) SC 678 and submitted that the only area left for the interference to the Courts or Tribunals is the case where there is reason to believe that the action of the management is malafide not connected with the interest of the employer. The applicant has not challenged the order of transfer on the ground of violation of any statutory provisions made thereof and the allegations of malafide against the authority who made the transfer order are creations of imagination, only for the purpose of framing some of the other grounds to assail the order of transfer made in the public interest. It has been further submitted that the applicant has been posted at

applicant to insist for continuous posting at the same place at Bikaner. The respondents have already taken note of the applicant's personal family grievance and the same have been responded. It has also been submitted that the respondents complied with the order of the Tribunal dated 30.05.2013 in OA No.204/2013 and it is incumbent upon the applicant to follow office order dated 5.8.2013 and 23.10.2013. It has also been clarified that there has been no discrimination because the applicant is T-3 (Lab Technician) whereas Shri Om Prakash is working on the post of T-5 (Livestock Assistant) and Shri Mala Ram has been promoted to the post of T-1 (Field Technician) and their nature of duties are different and cannot be compared. It has also been submitted that the respondents have complied with the order of the Tribunal dated 30.05.2013 in earlier OA No. 204/2013. The respondents have further referred to the judgment of the Hon'ble Apex Court in the case of State of U.P. vs. Govardhan Lal, (2004) 11 SCC 402 and M.Sankaranarayanan, IAS vs. State of Karnataka, (1993) 1 SCC 54 in support of their contention and also referred to the Apex Court judgment in State of Madhya Pradesh vs. S.S.Kourav, reported in AIR 1995 SC 1056, wherein it has been held by the Apex Court that it is not permissible for the Court or Tribunal to go into the relative hardship of an employee which may be caused by his transfer/posting. It is for the competent

mitigate the real hardship in the interest of goods and efficient administration. Therefore, the respondents have prayed for dismissal of the OA.

4. The applicant has filed rejoinder, dated 20.03.2015, rebutting the points raised in the OA, denying the reply and further submitting that as per information received by him under RTI that there are proportionately less vacancies of Technicians in Garsa, than in Bikaner (Ann.A/8) and his transfer has been made on the recommendations of respondent No.4, because he was biased as the applicant had made a complaint against him. The applicant has annexed Ann.A/14 to A/19 with his rejoinder.

5. Heard both the parties. Counsel for the applicant, Shri S.K. Malik, contended that the applicant was appointed as Lab Technician T-1 on 25.03.1988 after calling names from the Employment Exchange and he was discharging his duties and there were no complaints from his superior about his work. He further referred to the fact that Shri Shanker Lal who was senior to him having been appointed on 12.06.1978 and Shri Vimal Malhotra junior to him having been appointed on 16.06.1987 have continued to work at Bikaner from the date of their appointments. He further referred to para 4.3. of the OA in which it has been brought out that respondent No.4 was given charge of the department and while working under him the applicant was

forced to do duties which he was not supposed to do as a Technician and he was even treated like a Mazdoor, but even then he did what he asked to so, even though he went to depression, and he also made a complaint dated 07.05.2010 (Annexure-A/3) to the competent authority. The applicant also moved an application on 09.07.2012 (Annexure-A/4) for his promotion but without due consideration of the issues, the representation was decided and the applicant was transferred on malafide grounds on 16.04.2013 (Annexure-A/5) to Garsa village (Kullu) H.P. which is a far away remote place. The applicant gave a representation dated 17.04.2013 (Annexure-A/6) against the transfer order and even his immediate officer recommended for his retention but no heed was paid. Counsel for the applicant contended that as per transfer policy (attached at page 28 of OA with Ann-A/6) specially with reference to para 7 that when spouse is working in State Government effort should be made to post them together and he also referred to the instructions of the Department dated 15.01.2002 (Ann.A/7) in which certain directions that normally Group C & D employees should not be transferred except in unavoidable cases and with the permission of ICAR Headquarters. He also referred to para 4 of letter dated 18.4.2012 (Ann.A/9) regarding transfers where hardships of staff should be taken into account. However, without deciding the representation dated

order dated 30.04.2013 (Annexure-A/8). The applicant thereafter filed OA No.204/2013 which was decided on 03.05.2013 in which the transfer order dated 16.04.2013 and relieving order dated 30.04.2013 were quashed (presently annexed as Annexure-A/5 and A/8 in this OA). Counsel for the applicant referred specially to the para 6 & 7 of the order of this Tribunal and emphasized on the fact that the respondents among other things were directed to consider the fact that the applicant is a low paid employee and his wife is serving in State Government as Teacher, but the respondents decided the matter vide order dated 05.08.2013 (Ann-A/1) in which there is no consideration regarding his spouse working in the State Government and the order has also issued by the Assistant Administrative Office, who is not the competent authority to do so. Counsel for the applicant also referred to rejoinder filed by him wherein as per Annexure-A/14 and A/15, which are RTI applications and replies to RTI applications, it is clear that there is greater shortage of technician staff in Gharsa compared to Bikaner and even there had been advertisements of posts to be filled up at Bikaner and Avikanagar and in spite of that the case of the applicant has been rejected and he has been transferred. In sum, counsel for the applicant contended that as the transfer order and relieving order, which were Ann.A/1 and A/2 in the OA No.204/2013 had been quashed, no transfer can be

consider anything in the order dated 05.08.2013 (Annexure-A/1) in this OA regarding his wife being is a Teacher though this was directed by the Tribunal and guidelines also provide for the same and there is less shortage of staff in Garsa than in Bikaner and as brought out, the transfer appears to be case of malice and malafide because the applicant had made a complaint against respondent No.4, and prayed that on these grounds Annexure-A/1 be set aside and the OA be allowed.

6. Per contra, counsel for the respondents, Shri A.K. Chhangani, submitted that the applicant concealed a number of facts and actually he is not a low paid employee at all and though he was appointed in 1988 i.e. almost 28 years ago as Technician T-I, he is presently Technician T-3 (Technician -II in the scale No.3) and drawing a salary of Rs.41,897/- He also referred to para-4 of the offer of appointment dated 14th March, 1988 (Ann.R/1) wherein, the conditions of service provide that he is required to serve in the Institute or offices of the ICAR located anywhere in the country and now he cannot wriggle out of the same as he was appointed in Institute on that basis. He further referred to interim order dated 12.11.2013 wherein the only argument considered by the Tribunal was that his wife is working in the State Government and his son was suffering from illness and all other arguments that may have been raised by him were not considered. Counsel for

litigation and the grounds raised in the first OA No.204/2013 cannot be agitated again and again. Counsel for the respondents contended that no case of malice and malafide transfer is made out because firstly the applicant was at Bikaner consistently for 25 years from the time of appointment and secondly the applicant made a complaint in May 2010 i.e. dated 07.05.2010 and transfer was made on 16.04.2013 i.e. after almost 3 years and this cannot be at all a ground for alleging malafide. He further referred to para 6 of the judgment dated 30.05.2013 (Ann.A/10) in the earlier OA No.204/2013 wherein Tribunal itself has held that policy has only a persuasive value. Counsel for the respondents further contended that in order dated 05.08.2013 (Ann.A/1) all the issues have been comprehensively considered and as far as question of requirement of work and number of persons available is concerned, these are issues which have to be decided by the Department on administrative basis and it is not for the applicant to decide merely on the basis of RTI information, as to what are the actual requirements of department. It was further submitted that in transfer order, there is no need/requirement to give reasons but in this case in Annexure-A/1 it has been specifically mentioned that the applicant has been transferred to carry out research activity relating to 12th Five Year Plan. He also refuted the contention of the counsel for the applicant that the transfer

can be clearly seen, the AAO has only communicated the order and the order itself says that competent authority has passed the order and asked for the decision to be communicated to the applicant. He also referred to Annexure-R/2 and R/3 when the matter was referred to Under Secretary, Indian Council for Agriculture Research Hqrs. and vide Annexure R/3 dated 08.04.2013 NOC was received and thereafter transfer order was issued on 16.04.2013 (Ann.A/5). The fact that there is some noting dated 18.04.2013 on this letter dated 08.04.2013 has no relevance. Counsel for the applicant referred to catena of judgments, which he has referred in the reply in support of his contentions, which uphold that the transfer is a condition of service and it is presumed to be bonafide unless contrary is proved by the acceptable material and prayed for dismissal of the OA.

6. Considered the aforesaid contentions and perused the record. It has been the contention of the counsel for the applicant that the transfer order dated 16.4.2013 (Ann.A/1) and relieving order dated 30.4.2013 (Ann.A/2) were quashed in the earlier OA No.204/2013 and presently the order dated 5.8.2013 which has been filed at Ann.A/1 is not a fresh transfer order and, therefore, invalid. In this connection, it is seen that vide earlier order of the Tribunal dated 30th May, 2013 in OA No.204/2013, the following directions were given:-

"7. Looking into the entire facts and circumstances of the case, especially that the applicant is a low paid employee and his wife is serving in State Government as teacher at Bikaner, Ann.A/1 and A/2 are quashed and the respondents are directed to consider the Ann.A/6 and forward the same to the competent authority. The present OA shall also be forwarded as an additional representation to decide it within 3 months from the date of receipt of this order. Further, after considering entire facts averred in the application as well as Annex A/6, competent authority shall pass a reasoned and speaking order. In the meantime, applicant will not be disturbed from his present place of posting.

8. After completion of this exercise, if applicant has any grievance, he may file a fresh OA if desires. There shall be no order as to costs."

The order dated 5.8.2013 (Ann.A/1) has been issued pursuant to order dated 30th May, 2013 passed in OA No.204/2013 after considering representation of the applicant, therefore, as it is in pursuance to the directions of this Tribunal, on this ground it cannot be held invalid.

7. The applicant has also contended that the order dated 5.8.2013 (Ann.A/1) has not been issued by the competent authority, but it is seen that in the beginning of the order itself it has been mentioned that the decision of the competent authority is being communicated. Thus, the contention of the counsel for the applicant that the order Ann.A/1 has not been made by the competent authority, is not valid.

8. It has also been one of the contention of the counsel for the

whether the fact that wife of the applicant is working as Teacher in the State Government has been considered or not. In this regard, in para-7 of Ann.A/1 it has been clearly mentioned that all the circumstances mentioned in the representation dated 17.4.2013 have been considered and, therefore, the contention of the counsel for the applicant does not hold much force.

9. The main contention of the counsel for the applicant has been that transfer of the applicant to Garsa (Kullu, H.P.) was out of malafide and annoyance because the applicant has made complaint against respondent No.4 and also represented against his not being promoted. Per contra, contention of the counsel for the respondents had been that the complaint was made in the year 2010 and transfer has been made in the year 2013 and further due approval and permission by the Indian Council of Agricultural Research Hqrs. has been taken, as may be seen from Ann.R/2. It is evident that the transfer has been made three years after the complaint with due approval of the competent authority and the transfer cannot, therefore, be said to be made on malafide basis.

10. Counsel for the applicant on the basis of information received under RTI as filed with the rejoinder, had further contended that in fact there are proportionately less vacancies at

therefore, retention of the applicant at Bikaner is fully justified. On the contrary, counsel for the respondents contended that it is not for the applicant to decide about requirement of work and the persons required and also referred to the fact mentioned in the order dated 05.08.2013 (Ann.A/1) in which it has been clearly mentioned that the applicant is being sent to Garsa (Kullu, H.P.) for important research activities relating to 12th Five Year Plan. In this regard, it is clear that the requirements of the personnel and work are to be determined by the respondent authorities and merely on the basis of certain vacancies, the transfer order cannot be questioned or set-aside.

11. Counsel for the respondents had also contended that the applicant is not a low paid employee because he is drawing salary of more than Rs. 40,000 per month and presently he is in T-3 cadre, though he was recruited in T-1 cadre long back. He also emphasized that the applicant has been working in Bikaner for the last 25 years and it is his first outside posting that too for an important research work and that as per condition of service, he is liable to be transferred in the institutes or offices of the ICAR anywhere in the country.

12. Considering the contentions, pleadings and on the basis of aforesaid analysis, overall, it is clear that the order dated 5.8.2013 (Ann.A/1) has been passed in pursuance of the direction of this

Tribunal in OA No.204/2013 by the competent authority, and no case of malafide transfer appears to be made out because the transfer was made almost after 3 years after the complaint made by the applicant. The applicant has all India transfer liability anywhere in India in the Institutes and offices of the ICAR as per terms and conditions of his offer of appointment and he has been posted out of Bikaner for the first time after 25 years. Moreover, the applicant is working in T-3 cadre and is being sent to Garsa (Kullu, H.P.) for research work relating of 12th Plan. It has been held in a catena of judgments of the Hon'ble Apex Court including those referred to in the reply by the respondents that transfer is an incidence of service and it is for the concerned administrative authority to decide who should be posted where and that the Courts and Tribunal should not ordinarily interfere in the transfer matters, unless there is a case of violation of statutory rules and proven malafide and in this case it does not appear to be so.

13. In view of above analysis, no case appears to be made out in favour of the applicant and the OA is accordingly dismissed with no order as to costs. The interim direction issued on 12.11.2013 and since continued also thus stand vacated.


(MEENAKSHI HOOJA)
Administrative Member

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