

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 471/90 xx
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DATE OF DECISION 31.7.1990

Dr. R.S. Lal Mohan _____ Applicant (s)

Mr. K.P. Dandapani _____ Advocate for the Applicant (s)

Versus
The Central Marine Fisheries Research Institute, Kochi and another. Respondent (s)

Mr. P. Jacob Varghese _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji, Vice Chairman

The Hon'ble Mr. A.V. Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Shri S.P. Mukerji, Vice Chairman)

In this application dated 29.5.90 the applicant,

Dr. Lal Mohan, Principal Scientist in the Central Marine Fisheries Research Institute, Kozhikode under the Indian Council of Agricultural Research, has prayed that the impugned order of his transfer dated 6.3.90 at Annexure-I shifting him from Calicut to Veraval should be set aside dated 21.4.90 and respondents directed to dispose of his representation at Annexure-VI. That representation was considered under the interim orders of this Tribunal and rejected on 23.6.90. The brief facts of the case are follows:

The Central Marine Fisheries Research Institute with Headquarters at Kochi (Cochin) has its research centres on the Gujarat coast at various places including one at Veraval. The applicant has been working at the Calicut Centre since 1986. He holds a Masters Degree in Zoology and Ph.D in Fishing Biology and a Post-graduate Diploma in Marine Biology from Duke University, USA. He joined CMFRI in 1961 and between that year and 1986 he had undergone six transfers and come over to Calicut in 1986. According to him, he had served for 14 years in backward areas and his transfer again to Veraval, another backward area, while at Cochin and other centres a large number of Scientists have not been transferred even once during the last 15 years, is discriminatory and in violation of the transfer guidelines. According to him, he is specialised in Dolphins and Whales and his transfer to Veraval where there is no facility for this specialisation will affect his scientific career. His representation against his transfer to Veraval was rejected on 17.4.90 without giving any reason. His further representation at Annexure-VI was also similarly rejected. He is a heart patient and his transfer to Veraval will affect him adversely.

2. According to the respondents, the impugned order of transfer covering not only the applicant but 16 other Scientists also, was ordered on the recommendations of the Institute's Transfer Committee which consists of all

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Heads of Division and chaired by the Director. The
Committee discussed the need based requirements of
redeploying the scientific staff to various centres for
proper and effective implementation of the Institute's
research programme keeping in view the manpower require-
ments, the expertise available in various fields, faci-
lities and infrastructure available and the need to
evaluate efforts in identified areas at some of the
research Centres. The Committee strongly recommended the
transfer of the applicant from Calicut to Veraval taking
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into account the importance of Veraval Research Centre
as a major base and terminal for trawl fisheries and
considering his long experience in Demersal Fisheries
and lack of scientific staff at that Centre. There was
no Principal Scientist available at that Centre. While
ordering transfers the progress of work in different
projects, performance of individual scientists and
the result achieved by them were also taken into account.
They have asserted that the guidelines issued by the ICAR
were taken into account and have clarified that after the
applicant was inducted in the ARS Service in October 1975
he has undergone only three transfers. They have further
asserted that the applicant's transfer was ordered purely
in public interest to take care of the Research Centre
at Veraval and administrative requirements, problems and
discipline at headquarters and other centres. The Transfer

for the Committee took into account capability of the Scientists ⁶ selection of right men for the right job. Regarding the applicant's specialisation in Dolfins and Whales, the respondents have stated that he had worked earlier on fishery resources such as sciaenids for a number of years and that work can be carried out on an all-India basis. The project that he is handling at Calicut will not suffer, by his transfer as a team of Scientists is working on that. The Whales and Dolfins could be studied by the applicant all along the Indian coast and the project in which the applicant studied these mammals "has since been wound up as it has achieved its linked objective." Such species occur all along our coasts including Veraval and one can make occasional observations to keep his scientific interest on the same without prejudice to his assigned work." Regarding his heart problem, it has been stated that he proceeded abroad to Netherlands by air, and his deputation to Australia during November-December had already been approved by the ICAR and he is proposing to go to California in October 1990. The implication perhaps is that if the applicant can undertake such a long and frequent journeys by air, his heart problem may not be so acute as to presume that his posting at Veraval will cause a health problem for him. They have indicated that the applicant has not alleged any malafides as there

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is no malafides in his transfer. They have referred to the ruling of the Supreme Court in Union of India Vs. H.N.Kirtanias, (1989) 3 SCC 447. It was held that transfers made on purely administrative reasons and in public interest is not open to be interfered with by Courts or Tribunals unless it is malafides, illegal or violative of statutory rules.

3. In the rejoinder the applicant has stated that in one case of Shri Reghunathan, the transfer made from Cochin on the recommendation of the Transfer Committee was cancelled by the Director General, ICAR. He has argued that even bigger Regional Centres of CMFRI having larger staff than at Veraval, have no Principal Scientists. Two posts are already lying vacant at Veraval and instead of filling up these posts in other special disciplines of marine fisheries the applicant, who is in the Demersal Fisheries Division, is being transferred there when there is no vacancy in that discipline. According to him, the Demersal Division will be over staffed at Veraval. He has argued that the project on sciaenids fishes which he was handling at Calicut will suffer on his transfer. He has stated that this contention that Scientists with 15 years in a particular station have not been touched, has not been rebutted by the respondents. His transfer before completing 5 years of tenure has already been admitted by the respondents. He has asserted that he has

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specialised in Culture of Fishes and Prawns and Dolphins and is being sent to Veraval on a subject which is alien to his specialisation, i.e. Cat Fish Project. He has however conceded that the project on Marine Mammals on which he was working was closed before the expiry of its period. He has also alleged that while a junior Scientist from Calicut was allowed special casual leave to attend Science Congress meeting, he has not been allowed such leave. He has also challenged the rejection of his representation by the Director General on the ground that the Director General has not given any reason for rejecting his representation.

4. We have heard the learned counsel for both the parties in great details and gone through the documents carefully. It is true that the guidelines laid down by the ICAR in regard to transfer of Scientists have not been strictly adhered to in the impugned transfer of the applicant from Calicut to Veraval. He was posted in Calicut in 1986 and is being transferred prematurely after 4 years while the tenure of posting at Calicut is 5 years. But the fact remains that admittedly the applicant was posted at Calicut in 1975 also and had been allowed to stay there for 6 years till 1981 when he was transferred to Mandapam. So, the shortfall in his present tenure at Calicut can be deemed to have been adjusted

by the excess tenure of his posting at Calicut from 1975 to 1981. It is also correct that there may be Scientists with longer stay at Calicut who have not been transferred but, since in the research work of marine fisheries biology the public interest of intensifying of research projects in particular areas and Centres cannot be lost sight of and Veraval has been designated as an expanding research centre with new building coming up, the applicant's transfer to Veraval cannot be faulted.

The applicant himself has not alleged any malafides in the impugned transfer. As regards the discipline of the Scientist not to be disturbed on transfer, the applicant who is in the Demersal Fisheries Division (DFD) as indicated at Annexure-VIII (produced by the applicant himself), while he was in Calicut during 1989, is also being shown in the same discipline of DFD in Annexure-IX on his posting at Veraval. The learned counsel for the applicant very ably and strongly argued that the applicant's specialisation in Dolphins and Whales cannot be allowed to suffer by his posting to Veraval where these mammals are not available. The respondents have stated that the project at Calicut where these mammals were being studied in their occasional strandings at ~~Calicut~~ has since been wound up as it had achieved its linked objective. Accordingly, even his continued stay at Calicut could not have given him the facility which the applicant was having in his own line of specialisation.

It has also been stated that these mammals occur all along our coasts including Veraval and the applicant can make his own observations to protect his scientific interest for these species. In any case, the species specialisation which is personal to the applicant cannot be the determining factor in his posting to the various research centres which have to cater to the needs of the nation and the research priorities which have been conceived by the ICAR. We are satisfied that these priorities and the need of proper deployment of the scientific staff have been properly looked after by the Transfer Committee chaired by the Director of the CMFRI and comprising Heads of Division and the Senior Administrative Officer. A Committee of 10 persons, mostly eminent Scientists, cannot be presumed to have taken an arbitrary decision against the public interest and interest of national research on marine fisheries by posting the applicant to Veraval. On the other hand, the proceedings indicate that considering the importance of the Veraval Research Centre as a major base and terminal for trawl fisheries and also considering the lack of suitable person there to undertake the important programme, they strongly recommended the applicant's transfer from Calicut to Veraval. It may be noted that as a Principal Scientist he will be heading the team of Research Scientists.

at Veraval. The applicant has not alleged any malafides in his transfer order. The oblique reference to his not being granted leave to attend the Science Congress was explained by the learned counsel for the respondents drawing our attention to the instructions issued in this regard to the effect that special casual leave is granted only to those who were invited to attend or read scientific papers in the Science Congress. Since the applicant did not fall in these categories, he could not be granted special casual leave. The fact that he has been allowed to undertake a number of international journeys to Australia, California during the year shows that there is no animus against him.

5. The learned counsel for the applicant referred to the decision of the Karnataka Administrative Tribunal in B.N. Subramaniaraye and others Vs. State of Karnataka and others, (1987) 5 SCC 77 to urge that the Tribunal can deal with disputes regarding transfer also. There is no ~~dispute~~ doubt about this. It is established law that where transfer is made for collateral purposes or is discriminatory or vindictive in nature, judicial intervention cannot be excluded. 1975 (2) SLR 76; 1986 (1) SLJ 480; 1972 SLR 910; 1980 (1) SLR 788; 1979 (1) SLR 309SC 1973 (1) SLR 1153. Where, however, no malafides are involved as in this case, and the transfer is in public

interest, judicial intervention is more an exception than a rule. A Full Bench of the Tribunal in Kamlesh Trivedi Vs. ICAR, ATR 1988 (2) CAT 116, observed that the transfer per se is not punitive in spite of the hardship caused and is valid if it is in the exigencies of service or in the public interest. It also observed that the violation of guidelines if in public interest is permissible. The Tribunal should not intervene in cases of transfer if the transfer is in public interest, bonafide, ordered by a competent authority and there is no collateral purpose. A transfer in order to maintain efficiency and smooth functioning of Government offices has been held to be valid in M. Dass Vs. Senior Divisional Mechanical Engineer and Others, ATR 1988 (2) CAT 610.

In Mohan Barua and Others Vs. Union of India, 1986 (1) SLJ 480, it was held that the management is in the best position to judge how to deploy the employees. The Supreme Court in Union of India & Others V. H.N. Kirtania, (1989) 11 ATC 269 held that the court should not intervene in transfer matters unless it is malafide or illegal and is in public interest.

6. As regards the applicant's contention that Scientists with 15 years of stay at a particular place have not been transferred, this Tribunal held in Amarnath Vaish Vs. Union of India & others, ATR 1987 (1) CAT 353, that transfer in exigencies of service while retaining

others with longer tenure and not vitiated by malafides or collateral interests, does not attract Articles 14 and 16 of the Constitution of India. Since in the instance case before us a Committee of 10 Heads of Divisions had strongly recommended the transfer of the applicant to Veraval, taking into account all relevant factors including the best research interests of Marine and Fisheries Research contemplated at Veraval, no malafides or collateral interests have been established, we see no reason to intervene in the matter.

7. In the facts and circumstances, we see no merit in the application and dismiss the same without any order as to costs.


31.7.90
(A.V. Haridasan)
Judicial Member


31.7.90
(S.P. Mukerji)
Vice Chairman