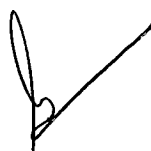


ORDER**HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

Aggrieved by the order dated 30.05.2010 transferring him from Kakkanad to Goa, this O.A. has been filed by the applicant to quash the same and to direct the respondents to continue him at Kakkanad.

2. The applicant is a Scientific Assistant working in the Central Integrated Pest Management Centre, Kakkanad, Ernakulam, under the Directorate of Plant Protection, Quarantine and Storage, Ministry of Agriculture, Government of India. He joined the service in the year 1991 at Wellington Island. He was transferred to Thiruchirappaly in the year 1996 from where he was transferred in July, 2007, to Kakkanad, which is a field station. He is supposed to impart training to the farmers. As no advance amount was disbursed to him and others during 2009-10 and on the assurance of the then Plant Protection officer that immediately on receiving the finds, the amount will be disbursed to them, the applicant had held classes at his own expenditure. Meantime, the third respondent took charge as Plant Protection Officer and he has not yet disbursed the amount already sanctioned and encashed by the office to the applicant and others. The 3rd respondent is alleged to have demanded commission for disbursing the amount. The issue was taken up with the higher authorities who ordered an enquiry into the matter. The enquiry scheduled to be held in March, 2010 was postponed. The applicant made representations to the Plant Protection Adviser to the Government of India on 07.01.2010



and 19.05.2010. The applicant was transferred vide order dated 30.05.2010 from CIPMC, Ernakulam to CIPMC, Goa.

3. The applicant submits that that his transfer order is vitiated by malafides. It is made to thwart the enquiry against the 3rd respondent. The transfer order is made in violation of guidelines at Annexure A-4. The applicant has not completed his tenure at the present station which is 7 years. The applicant is a Group-C employee and normally the transfer has to be within the zone. He is now transferred out of zone without any exceptional circumstances for doing so. He further submits that the competent authority in the guise of displacement transfer had wrongfully acted intentionally without just cause or excuse for want of reasonable or probable cause. The power of transfer is exercised maliciously as the authority is motivated by personal animosity towards the applicant. The transfer order is vitiated by malice in fact and malice in law. There is no public interest involved in his transfer.

4. The respondents resisted the O.A. It was submitted that the applicant should have first exhausted the channels available within the department before approaching this Tribunal. The applicant is having All India transfer liability. Hon'ble Supreme Court in the case of **Shilpi Boase (Mrs.) and Others vs. State of Bihar and others**, held that "the Courts should not interfere with a transfer which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide." Against the total sanctioned strength of 144 in the cadre of Scientific Assistant-I to



which the applicant belongs, there are only 105 officials in position. As such the functional requirement in a particular office is required to be managed by transfer of the officials in the cadre. An enquiry based on the complaint received from the applicant regarding non payment of FFS funds and harassment of the staff members by the Officer Incharge, CIPMC, Ernakulam, is under way and is not likely to be affected with the applicant's joining to the new place of posting. The transfer policy framed for Directorate of Plant Protection, Quarantine and Storage, Faridabad, is based on the directives given by the Central Vigilance Commission with regard to preventing possibilities of corruption in the Government departments. As per transfer policy, a Group-C official can be transferred within the same zone or maximum to the next zone. The transfer of the applicant, in consonance with the transfer policy, is made to the next zone. The officials can be transferred anywhere, any time even before the prescribed tenure on administrative ground. The applicant was transferred from Kakkanad to Goa as there was a functional requirement at CIPMC, Goa. The transfer order was issued under the signature of Under Secretary (Hqrs) after its approval by the competent authority. The applicant has failed to establish lack of jurisdiction or violation of statutory provisions or mala fide in transferring him in Goa. Therefore, the O.A. should be dismissed.

5. In the rejoinder, the applicant submitted that the respondents have not specified the authorities within the department who could be approached for statutory remedy before approaching this Tribunal. Even otherwise, there is no absolute bar for this Tribunal to entertain the O.A.



Merely because the applicant is having an All India transfer liability, the respondents cannot transfer the applicant at their whims and fancies. The functional requirement at the office in Goa is not specified. Nothing prevented the respondents from appointing one of the new recruits at Goa. The shortage of staff at Kakkanad is much more grave than that at Goa. Hence his retention at Kochi is what public interest demands. It is the Plant Protection Adviser who is competent to transfer the applicant. He retired from service on 31.05.2010, the day immediately after the impugned order was issued on 30.05.2010, which is a closed holiday for the Organisation. The 3rd respondent who had been impleaded in his personal capacity ought to have filed an affidavit and should not have sought shelter behind the general reply statement filed on behalf of all the respondents. The respondents have not established any extreme emergency to transfer the applicant to the next zone.


6. In the additional reply statement, the respondents reiterated their stand already made in the reply statement.

7. Arguments were heard and documents perused.

8. The transfer order of the applicant is issued in the backdrop of an enquiry against the 3rd respondent on the complaint of the applicant regarding non reimbursement of the amount already spent from his pocket for imparting training to the farmers. As per the guidelines, 90% of the estimated expenses for holding training classes is to be given as advance. The remaining 10% shall be drawn after the training classes are over. In



the instant case, the applicant alongwith others were directed to incur expenditure from their own pockets but even after the funds became available and the amount was sanctioned and encashed, the officials were not reimbursed. According to the applicant, the 3rd respondent even demanded commission for disbursing the said amount. Although an enquiry was ordered on the complaint made by the applicant, it does not appear that it made any head way. Further representations from the applicant appear to have triggered a single order transferring the applicant from Kakkanad to Goa. There are allegations about corruption. The amount sanctioned and encashed is still in the hands of the 3rd respondent, it is alleged by the applicant. The applicant is a thorn in the flesh of the 3rd respondent. The whole scenario gives an impression that the applicant has been transferred out in order to save the 3rd respondent. The respondents take refuge in transfer policy which is based on the directives given by the Central Vigilance Commission with regard to preventing corruption in Government departments. This is like the devil quoting scriptures. If the respondents are really concerned about preventing corruption the right thing to do is to complete the enquiry against the 3rd respondent expeditiously and punish him if found guilty instead of transferring the applicant. If he is found innocent, the applicant may be dealt with suitably. But instead of conducting an enquiry against the 3rd respondent, the applicant has been shunted out to Goa under the guise of public interest. The applicant has raised complaints against the 3rd respondent. A situation is created by the impugned transfer to make it more difficult for him to prove the allegation.



9. Respondents took the plea that out of 144 posts of Scientific Assistant-I, only 105 posts have been filled up. In such a situation, the shortage of officers should be equitably distributed. The respondents have no case that comparatively the Kakkanad office is better off in terms of number of officers in position than the office at Goa. It is also reported that a lady officer is already posted at Goa, which could have met the functional requirement of transferring the applicant there.

10. Although the 3rd respondent is impleaded in his personal capacity, he he has not filed an affidavit by himself specifically refuting the allegations against him. This conscious failure on his part leaves no scope but to draw an adverse inference against him.

11. It is true that the competent authority has power to transfer the applicant. The power of transfer is stated to have been exercised to meet the functional requirement at Goa but in fact, it could be to defeat the enquiry against the 3rd respondent. It is true that as per transfer guidelines, an official can be transferred before completion of his tenure. A Group-C official can also be transferred to the nearby zone. But the extreme administrative exigency which compelled the respondents to transfer the applicant is not disclosed which is absolutely necessary in the facts and circumstances of this case, to uphold justice and transparency in administration. Issuing the transfer order on a closed day, just one day before the competent authority retired also adds to the opaqueness of the whole process of transfer of the applicant. The applicant who hails from Tamil Nadu can easily communicate with the farmers in Kerala, but it would



be extremely difficult to converse with the farmers at Goa who speak konkani with which the applicant is not at all conversant. The All India transfer liability does not mean an officer should be transferred all over India without regard to the functional efficiency of the officer in a particular zone.

12. The applicant is adversely affected by his transfer to Goa where his functional efficiency will be impaired by his inability to speak the local language. He is also sent to a far away place from his native place violating the transfer guidelines in as much as the critical administrative and functional requirement of his transfer is kept a secret. Therefore, there is force in the contention that the competent authority has exercised the power of transfer at the instance of the 3rd respondent who is motivated by personal animosity towards the applicant who has levelled charges of corruption against him culminating in an enquiry. Thus, the transfer order suffers from malice in fact.

13. The transferring authority has clothed the transfer in public interest. The public interest involved in transferring the applicant, who is apparently a whistle blower against corruption, is not discernible. There is apparently no just cause or excuse to transfer the applicant to Goa before he completed his tenure of 7 years at Kakkanad. The competent authority inflicted an injury upon the applicant by transferring him to Goa in contravention of the guidelines, knowing fully well that he had made serious complaints against the 3rd respondent and that an enquiry is ordered and that it is postponed. Therefore, exercise of the power of



transfer in the instant case smacks of malice in law also. The impugned transfer order hides more than that it reveals.

14. Although the applicant has not exhausted the remedy of approaching higher authorities, I hold that non exhaustion of the available remedy, in the facts and circumstances of this case, is not a bar for this Tribunal to entertain this O.A., in the interest of justice and fair play.

15. In view of the above, I have no hesitation in holding that the impugned order of transfer dated 30.05.2010 is vitiated by mala fides. On that count alone, the order needs to be set aside.

16. The O.A. is allowed. The order of transfer dated 30.05.2010 is quashed and set aside. The respondents are directed to permit the applicant to continue to work as Scientific Assistant-I in the Central Integrated Pest Management Centre, Kakkanad, Ernakulam. No costs.

(Dated, the 28th October, 2010)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

cvr.