

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.574/2002

Wednesday this the 25th day of September, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

K.P.Antony, aged 57 years
S/o late K.C.Paily,
Principal Scientist, QAM Division
Central Institute of Fisheries,
Technology, Matsyapuri PO
Kochi.29 residing at Karikkamuri House
Kumaranasan Road, Kaloor PO
Kochi.17.

Applicant

(By Advocate Mr. P.V.Mohanan)

Vs.

1. The Director General,
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi.
2. The Director,
Central Institute of Fisheries
Technology, Matsyapuri PO
Kochi.29.

...Respondents

(By Advocate Mr. P.Jacob Varghese)


The application having been heard on 25.9.2002, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

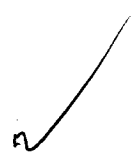
The applicant, a 57 years old Principal Scientist in the QAM Division of the Central Institute of Fisheries Technology, (CIFT for short) Matsyapuri, Kochi has filed this application under Section 19 of the Administrative Tribunals Act impugning the Office Order dated 19.4.2002 of the second respondent Director, CIFT transferring the applicant to CIFT Research Centre, Veraval, Gujarat with immediate effect and

until further orders purportedly in public interest. It is alleged in the application that the applicant being a Principal Scientist of above 55 years of age in accordance with the guidelines he is not to be transferred without his consent, that the transfer not being a routine transfer but in administrative interest it should not have been made without the prior approval of the Director General, ICAR, that while picking up the applicant for transfer to Veraval the first respondent has not considered that there are Principal Scientists aged below 55 years with longer stay at Kochi than the applicant, that at Veraval there is only one post of Principal Scientist and as a Principal Scientist is already there, the transfer of the applicant to Veraval would create an imbalance in the cadre, that the applicant had made a representation to the Director General of ICAR for permission to continue at Kochi as the project the applicant is on would come to a close only in the year 2003, that though the Director General directed the second respondent to reconsider the transfer of the applicant on certain grounds with a direction to give a copy of the letter to the applicant, the same was not given to him and that despite the direction to reconsider the transfer the applicant is being compelled to give effect to the impugned order of transfer and this action is arbitrary and unjustified. Thus alleging that the transfer is arbitrary, not in public interest and is unsustainable in law, the applicant seeks to set aside the impugned order Annexure.A1, and for a direction to the respondents to allow the applicant to continue in his present post at Cochin.



2. The counsel for respondents has filed a counsel statement to which the applicant has filed a rejoinder. The counsel has filed an additional statement. It has been contended by the respondents that the transfer of the applicant is only a routine transfer recommended by the Transfer Committee, that this being a routine transfer prior approval of the Director General is not required, that the transfer having been made only in public interest, the Tribunal may not interfere in the matter and that for the query raised from the ICAR Headquarters replies Annexure.R.4 and R.6 had already been given and that therefore there is nothing in this case which require judicial intervention.

3. We have heard Shri P.V. Mohanan, learned counsel of the applicant and Shri P.Jacob Varghese, learned counsel for the respondents and have also gone through the materials which are placed on file. The case of the applicant that he being a Principal Scientist aged above 55 years should not have been transferred without his consent and without the approval of the Director General ICAR has been disputed and denied in the counsel statement on various grounds stating that the applicant is a Principal Scientist placed in the position only by assessment etc. However, we notice that in response to the representation made by the applicant to the Director General, the second respondent was directed to reconsider the transfer of the applicant on the following grounds:



- (i) When there exist no vacancy of Principal Scientist at Veraval, why a Principal Scientist over 55 years of age is being transferred and that too without his consent.
- (ii) If two scientists, who have served for more than 5 years at Veraval, and desire to be transferred to the CIFT Hqrs, Lab. then, whether younger scientists who were senior to Shri Antony and with longer period of service at Cochin can be considered for transfer to Veraval, if not, reasons thereof.

In reply to the above the second respondent Director given a reply to the Deputy Director General on 20.7.02 (Annexure.R.4) but even thereafter a D.O.letter was received by the second respondent from the Deputy Director General (Fy) which reads thus:

"In connection with a representation of Shri K.P.Antony, Principal Scientist of CIFT with regard to his transfer to Veraval, I would like to have your detailed comments on (a) the job requirements at the Veraval Centre, (b) grounds for consideration for transferring Shri Antony who is above the age of 55 years, while there were other scientists who were below 55 years as per his representation and (c) consideration for the transfer in context of earlier decisions of the courts. You may also please provide any other materials required in the matter".

In reply to this the second respondent has sent a detailed letter on 30.8.02. It is seen that the Director General has now been furnished with the relevant details by the second respondent. On the representation of the applicant to the Director General, ICAR aggrieved by the impugned order of transfer, the Director General has called for comments of the second respondent. We are of the view that it would under these circumstances be appropriate to leave it to the Director General, ICAR to take appropriate decision in the

matter keeping the relief of the applicant pursuant to the impugned order in abeyance.

3. In the light of what is stated above, in the interests of justice and in the special circumstances of the case we dispose of this application with a direction to the Ist respondent Director General to consider Annexure.A4 representation of the applicant and to give the applicant an appropriate reply after giving the applicant an opportunity of personal hearing. We further direct that till a decision on the representation of the applicant by the Ist respondent after personal hearing is communicated to the applicant, the applicant shall not be relieved from his posting as Principal Scientist, QAM Division, CIFT, Kochi. No order as to costs.

Dated this the 25th day of September, 2002



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

(s)(25902).



A.V. HARIDASAN
VICE CHAIRMAN

A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the Office Order No.F.3-11/2001-Admn. dated 19.4.2002 by the 2nd respondent to the applicant.
2. A-2: True copy of the Note No.F.7B/2002 Admn. dated 6.5.2002 by the 2nd respondent to the applicant.
3. A-3: True extract of Chapter V Transfer Policy (Page 30-33) of Agricultural Scientific Research Rules of Indian Council of Agricultural Research.
4. A-4: True copy of the representation dated 9.5.02 by the applicant to the first respondent.
5. A-5: True copy of the order in OA No.344/2002 passed by the Central Administrative Tribunal, Ernakulam Bench.
6. A-6: True copy of the proceeding No.F.No.3-18/2002-IA.VI dated 8.8.2002.
7. A-7: Details of Cadre Strength Institute.

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3.10.02