

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XXXXXX

380

1990

DATE OF DECISION 23.11.1990

P. James Abraham Applicant (s)

Mr. M. R. Rajendran Nair Advocate for the Applicant (s)

Versus

The Director General, Respondent (s)
Indian Council of Agricultural Research,
Krishi Bhavan, New Delhi & Another

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

CORAM:

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

and

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

(Mr. A. V. Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant working as Senior Administrative Officer, Central Marine Fisheries (CMFRI for short) Research Institute, Cochin has prayed that the order dated 3rd May, 1990 of the Indian Council of Agricultural Research, Annexure-I, transferring him to Indian Grassland Fodder Research Institute, Jhansi with immediate effect may be quashed or in the alternative the respondents be directed to intimate the applicant reasons for his transfer to give him an opportunity to make representation and to retain him at Cochin till the representation is considered and disposed of.

2. The applicant was posted on promotion as Senior Administrative Officer in the Central Marine Fisheries Research Institute, Cochin on 1.7.1988, While he was working as an Administrative Officer in C.I.F.T, Cochin. As per the service rules for the combined cadre of Administrative Officers in Indian Council of Agricultural Research, 1975 the institutewise posting of a member of service would be on a fixed tenure of 4 years extendable by 2 years. While the applicant had not even completed 2 years in the Central Marine Fisheries Research Institute, by impugned order dated 3.5.1990, Annexure-I, he was ordered to be transferred to Indian Grassland Fodder Research Institute, Jhansi with immediate effect/direction that he should be relieved within 7 days on receipt of the order without waiting for a substitute, and that no representation against the order should be entertained. The applicant has filed this application challenging the above order of transfer on the ground that it is a punitive action taken against the applicant for satisfying the demands of a section of Scientists and other employees who were disgruntled by the firm administrative actions taken by the applicant. It is averred that the impugned order of transfer issued in violation of the guidelines is not in ^{the} public interest, and that, therefore, the same is not sustainable. The applicant prays that the impugned order may therefore be quashed.

3. In the reply statement the respondents have stated that, though certain complaints have been received against

the applicant, they are not the basis for the impugned order of transfer, and that the present transfer is mainly due to his overstaying at one station. They have stated that the transfer of the applicant has been made strictly on the basis of the provision contained in rule 14 of the service rules for the Combined Cadre of Administrative Officers, and that as the same has not been ordered as a punishment, the applicant is not entitled to have the order quashed. The applicant has filed a rejoinder wherein it is contended that his averment in the application that the order of impugned transfer has been issued to satisfy the disgruntled Scientists and other employees is fortified by a Newsletter produced as Annexure-V issued by the General Secretary of the CMFRI Employees Association dated 29.6.1990, wherein the Association has thanked the ICAR for transferring the applicant to Jhansi.

4. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced.

5. The impugned order of transfer is sought to be justified by the respondents in their reply statement and additional reply statement solely on the ground that the applicant has overstayed in the station where he is presently working, and that it was as per the rule 14 of the Combined Service Rules, the applicant was transferred out of Cochin. Rule 14 of the service rules for the Combined Cadre of Administrative Officers reads as follows:

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"Tenure of Posting: Members of the service will be liable to be transferred to any

Institute, Station or Centre of the ICAR anywhere in India. However, their Institute wise posting will normally be on a tenure of 4 years, extendable by 2 years.

Relaxation in individual cases on merit may be allowed at the discretion of the controlling authority who may transfer any member of the service to any Institute, Station or Centre of ICAR within the tenure period if so demanded by the exigencies of the Service." (emphasis added)

That the applicant was posted in the CMFRI, Cochin only on 1.7.1988 is not disputed. On 3rd May, 1990, the date of the impugned order, he has not even completed 2 years.

So the contention of the respondents that the transfer is effected strictly according to the Rule 14, because of his overstyal is found to be absolutely incorrect.

In paragraph 5 of the reply statement it has been stated that the applicant was transferred by the ICAR on administrative grounds and in public interest, and that in view of the decision reported in 1983 SCC 445 and 447, the impugned order of transfer is not liable to be interfere with. From the impugned order, Annexure-I, it is seen that no substitute has been posted in the place of the applicant.

It has not been stated in the reply statement of the respondents that the services of the applicant is felt unavoidable at the Indian Grassland Fodder Research Institute, Jhansi.

So we are not in a position to understand what ^{other} administrative reason could be there for ~~the~~ transferring the applicant than what has been stated in the reply statement. In the reply statement it has been clearly stated that the transfer of the applicant is mainly on the ground of his overstyal

at one station. While the tenure according to Rule 14 in an institute is 4 years, it cannot be said that the applicant who has not completed even 2 years in CMFRI has overstayed in the institute. From the documents produced it is evident that the CMFRI Employees Association has made two complaints to the Director, ICAR, one on 26.2.1990 at Annexure-III and another one subsequently at Annexure-IV. In Annexure-IV complaint a request has been made to transfer the applicant out of CMFRI, Cochin on the ground that he had been there for longer time than permissible under the rules. From Annexure-V, a copy of the Newsletter of the CMFRI Employees Association dated 29.6.1990, it is seen that the Association has thanked ICAR for transferring the applicant out of the Institute. These documents would create an impression that the complaints made against the applicant in Annexure-III and IV had something to do with the issuing of the impugned order at Annexure-I which unusually directs that no representation against the transfer should be entertained. If bad relationship between the applicant and the Employees Association was considered to be an administrative ground for transferring the applicant, the respondents should have in their reply statement stated so. But they have clearly stated that the complaints received against the applicant have nothing to do with the decision to transfer him. Therefore, finding that the applicant has not completed his tenure in the CMFRI, Cochin as per the service rules (Rule 14 of the Combined Cadre of Administrative Officers) and no other administrative exigency is stated to be in existence, we find that there is no...6/-

justification in transferring him stating that he has overstayed his tenure in the Institute which is factually incorrect.

6. In the conspectus of facts and circumstances, we allow the application and quash the impugned order at Annexure-I dated 3.5.1990. There is no order as to costs.


(A.V.HARIDASAN)

JUDICIAL MEMBER

23/11/90


(S.P.MUKERJI)

VICE CHAIRMAN

23.11.90

23.11.1990

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM
RA No.4 of 1991 in
O.A. No. 380 of 1990 ~~209~~

T.A. No.

DATE OF DECISION 26-4-1991

M Abdul Nizar Review Applicant (s)

Mr PV Mohanan Review Advocate for the Applicant (s)

Versus
P James Abraham & 2 others Respondent (s)

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. SP Mukerji, Vice Chairman

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
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JUDGEMENT

AV Haridasan, Judicial Member

The original application was filed by the first respondent challenging the order dated 3.5.1990 transferring him to Indian Grassland Fodder Research Institute, Jhansi. Respondents 2 and 3, the Director General, Indian Council of Agricultural Research and the Director, Central Marine Fisheries Research Institute sought to justify the transfer of the first respondent on the ground that the applicant had over-stayed in the station where he was working. Now the review applicant, who is said to be the General Secretary of CMFRI Employees Association wants to get himself impleaded in the original application which has already been disposed of and to have final order passed in the OA reviewed. The prayers

in this review application are:

- i) to review the order in OA-380/90 dated 23.11.1990 and dismiss the OA-380/90, and
- ii) to direct the respondents 1&2 in the OA to transfer the applicant from CMFRI to IGRI, Jhansi.

Our finding in the order is challenged in the review application on merits. The review applicant has absolutely no locus standi to pray for a review of the order because he is noway concerned with the issue involved in the O.A.

The question involved in the O.A. was whether the transfer of the applicant therein was justified or not. We have held that as the applicant in the OA had not completed the tenure at the Institute where he is working, the contention in the OA of the respondents 2&3 herein who were the respondents/that he was transferred as he had overstayed in the station is not tenable and that as no administrative exigency is stated to be in existence, the impugned order ~~in the case~~ was not justified. It is on that ground the original application was allowed. Of course it has come out from pleading and argument that certain complaints were made by the CMFRI Employees Association to the Director, ICAR against the applicant. We had observed in our order that documents produced in the case would create an impression that the complaint made against the applicant had something to do with the issuing of the impugned order of transfer. But the ground on which the application was allowed was that the contention of the respondents in the OA that the applicant therein had ^{stay ed} overstayed is not true to fact. The

review applicant who is not at all concerned with the transfer of the applicant on administrative exigency has no locus standi to challenge our finding and to say that the transfer of the applicant was in public interest. If the respondents 2&3 had any grievance against the order passed in the OA, they would have sought appropriate reliefs before the appropriate forum. Further, our finding in the OA are sought to be challenged on merit by a person who is in noway connected with the issue involved in the OA and who has no locus standi to claim impleadment in the OA. Therefore, we find that the review application does not merit any consideration. Hence the same is rejected.



(AV HARIDASAN)
JUDICIAL MEMBER

26/4/91



(SP MUKERJI)
VICE CHAIRMAN

26.4.91

26-4-1991

trs