A

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 378/2006
with O.As
379/06, 380/06, 381/06, 382/06, 383/06,
390/06, 391/06 and 392/06

Friday, this the 11th day of August, 2006

CORAM :

HON'BLE Mr.K.B.S.RAJAN, JUDICIAL MEMBER

1. **OA 378/06**

Dr.P.U.Zacharia
Senior Scientist,Mangalore Research Centre of CMFRI,
Mangalore - 1
Residing at : Moel Villa, MP-X/371, R.D.Nagar PO
Kasargod : Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Indian Council of Agricultural Research through the Secretary
ICAR, Krishi Bhavan, New Delhi - 110001

2. The Director General
Indian Council of Agricultural Research
Krishi Bhavan, New Delhi.

3. The Director
CMFRI, Kochi

4. Dr.Mohan Joseph Modayil
CMFRI, Kochi

5. Dr.E.Vivekanandan
Demersal Fisheries Division,
CMFRI, Kochi.

6. Dr.E.V.Radhakrishnan
Head, Crustacean Fisheries Division,
CMFRI, Kochi

7. Dr.N.G.K.Pillai
Head, Palagic Fisheries Division,
CMFRI, Kochi

8. Dr.M.Rajagopalan
Head, Fishery Environment Management Division,
CMFRI ,Kochi

9. Dr.M.Srinath
Head, Fishery Resource Assessment Division,
CMFRI,Kochi

10. Dr.R Sathiadas
Head, Socio-Economic Evaluation and Technology
Transfer Division, CMFRI, Kochi

11. Dr.Sunilkumar Mohammed
Head, Molluscan Fisheries Division,
CMFRI,Kochi

12. Dr.K.K.Vijayan
Head, Physiology Nutrition and Pathology Division,
CMFRI,Kochi

13. Dr. Rani Mary George
Head(Addl.Charge),Marine Bio-diversity Division,
CMFRI, Kochi.

14. Dr.G.Gopakumar
Head, Mariculture Division,Mandapam Research Centre
of CMFRI, Mandapam Camp,
Near Rameswaram, Tamil Nadu

15. Dr.S.Ayyappan
Deputy Director General(Fisheries),
ICAR, Krishi Bhawan,New Delhi : Respondents

(By Advocate Mr.T.P.Sajan, (R 1-3)
Mr. P.Santhosh Kumar (R 4 & 15)

2. **O.A.No.379/2006**

Dr.P.Kaladharan
Senior Scientist,CMFRI, Cochin
Residing at : Edavilakathil, Vaghyadhara Nagar
Mamangalam, Pottakuzhi Road
Palarivattom, Cochion - 25 : Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Indian Council of Agricultural Research hrough the Secretary
ICAR, Krishi Bhavan, New Delhi.

2. The Director General
Indian Council of Agricultural Research
,Krishi Bhawan, New Delhi

3. The Director
CMFRI, Kochi

4. Dr.Mohan Joseph Modayil
Director, CMFRI, Kochi

5. Dr.E.Vivekanandan
Head, Demersal Fisheries Division,CMFRI,Kochi

6. Dr.E.V.Radhakrishnan
Head, Crustacean Fisheries Division,CMFRI,Kochi

7. Dr.N.G.K.Pillai
Head, Palagic Fisheries Division, CMFRI,Kochi

8. Dr.M.Rajagopalan
Head, Fishery Environment Management Division,CMFRI,Kochi

9. Dr.M.Srinath
Head, Fishery Resource Assessment Division,CMFRI,Kochi

10. Dr.R.Sathiadas
Head, Socio-Economic Evaluation and Technology Transfer
Division. CMFRI, ,Kochi

11. Dr.Sunilkumar Mohammed
Head, Molluscan Fisheries Division,CMFRI,Kochi

12. Dr.K.K.Vijayan
Head, Physiology Nutrition and Pathology Division,CMFRI,Kochi

13. Dr.Rani Mary George
Head, Marine Bio-diversity Division,CMFRI,Kochi

14. Dr.G.Gopakumar
Head, Mariculture Division,Mandapam Research Centre of CMFRI, Mandapam Camp,
Near Rameswaram, Tamil Nadu

15. Dr.S.Ayyappan
Deputy Director General(Fisheries),
ICAR, Krishi Bhawan,New Delhi : Respondents

(By Advocate Mr.T.P.Sajan, (R 1-3)
Mr. P.Santhosh Kumar (R 4 & 15)

3. O.A.No.380/2006

Dr.P.K.Krishnakumar
Senior Scientist,Mangalore Research Centre of CMFRI,
Mangalore - 1
Residing at Flat No.602, Retreat Apartments, Falmir,
Mangalore- 1 : Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Indian Council of Agricultural Research hrough the Secretary
ICAR, Krishi Bhavan, New Delhi- 110 001

2. The Director General
Indian Council of Agricultural Research
Krishi Bhawan, New Delhi

3. The Director
CMFRI, Kochi

4. Dr.Mohan Joseph Modayil
Director, CMFRI, Kochi

5. Dr.E.Vivekanandan
Head, Demersal Fisheries Division,CMFRI,Kochi

6. Dr.E.V.Radhakrishnan
Head, Crustacean Fisheries Division,CMFRI,Kochi

7. Dr.N.G.K.Pillai
Head, Palagic Fisheries Division, CMFRI,Kochi

8 Dr.M.Rajagopalan
Head, Fishery Environment Management Division,
CMFRI,Kochi

9. Dr.M.Srinath
Head, Fishery Resource Assessment Division,
CMFRI, Kochi

10. Dr.R.Sathiadas
Head, Socio-Economic Evaluation and Technology Transfer
Division. CMFRI, Kochi

11. Dr.Sunilkumar Mohammed
Head, Molluscan Fisheries Division,CMFRI,Kochi

12. Dr.K.K.Vijayan
Head, Physiology Nutrition and Pathology Division,CMFRI,Kochi

13. Dr.Rani Mary George
Head, Marine Bio-diversity Division,CMFRI,Kochi

14. Dr.G.Gopakumar
Head, Mariculture Division,Mandapam Research Centre of
CMFRI, Mandapam Camp,
Near Rameswaram, Tamil Nadu

15. Dr.S.Ayyappan
Director General(Fisheries),
Indian Council of Agricultural Research ,
Krishi Bhavan, New Delhi. : Respondents

(By Advocate Mr.T.P.Sajan, (R 1-3)
Mr. P.Santhosh Kumar (R 4 & 15)

4. O.A.No.381/2006

Dr.G.Mohanraj
Principal Scientist Madras Research Center of CMFRI,
Chennai - 28 Residing at :
No.41, Ganesh Avenue Extension
Sakthi Nagar,Porur, Chennai - 16 : Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Indian Council of Agricultural Research through the Secretary
ICAR, Krishi Bhavan, New Delhi.

2. The Director General
Indian Council of Agricultural Research
Krishi Bhawan, New Delhi

3. The Director
CMFRI, Kochi

4. Dr.Mohan Joseph Modayil
CMFRI, Kochi

5. Dr.E.Vivekanandan
Head, Demersal Fisheries Division,CMFRI,Kochi

6. Dr.E.V.Radhakrishnan
Head, Crustacean Fisheries Division,CMFRI,Kochi

7. Dr.N.G.K.Pillai
Head, Palagic Fisheries Division, CMFRI,Kochi

8. Dr.M.Rajagopalan
Head, Fishery Environment Management Division,CMFRI,Kochi

9. Dr.M.Srinath
Head, Fishery Resource Assessment Division,CMFRI,Kochi

10. Dr.R.Sathiadas
Head, Socio-Economic Evaluation and Technology Transfer
Division., CMFRI, Kochi

11. Dr.Sunilkumar Mohammed
Head, Molluscan Fisheries Division,CMFRI,Kochi

12. Dr.K.K.Vijayan
Head, Physiology Nutrition and Pathology Division,CMFRI,Kochi

13. Dr.Rani Mary George
Head, Marine Bio-diversity Division,CMFRI,Kochi

14. Dr.G.Gopakumar
Head, Mariculture Division,Mandapam Research Centre of
CMFRI, Mandapam Camp,
Near Raneswaram, Tamil Nadu

15. Dr.S.Ayyappan
Deputy Director General(Fisheries),ICAR,Krishi Bhawan
New Delhi : Respondents

(By Advocate Mr.T.P.Sajan, (R 1-3)
Mr. P.Jacob Varghese (R 4)

5. **O.A.No.382/2006**

Dr.T.S.Velayudhan
Principal Scientist,Molluscan Fishery Division
CMFRI,Cochin
Residing at House No.63/382 (1st floor)
Ayyappankavu,East,Kochi - 18 : Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Indian Council of Agrixultural Research through the Secretary
ICAR, Krishi Bhavan, New Delhi.- 110 001

2. The Director General
Indian Council of Agricultural Research
Krishi Bhawan, New Delhi

3. The Director
CMFRI, Kochi

4. Dr.Mohan Joseph Modayil
Director, CMFRI, Kochi

5. Dr.E.Vivekanandan
Head, Demersal Fisheries Division,
CMFRI,Kochi

6. Dr.E.V.Radhakrishnan
Head, Crustacean Fisheries Division,
CMFRI,Kochi

7. Dr.N.G.K.Pillai
Head, Palagic Fisheries Division, CMFRI,Kochi

8. Dr.M.Rajagopalan
Head Fishery Environment Management Division,
CMFRI,Kochi

9. Dr.M.Srinath
Head, Fishery Resource Assessment Division,CMFRI,Kochi

10. Dr.R.Sathiadas
Head, Socio-Economic Evaluation and Technology Transfer
Division., CMFRI, Kochi

11. Dr.Sunilkumar Mohammed
Head, Molluscan Fisheries Division,CMFRI,Kochi

12. Dr.K.K.Vijayan
Head, Physiology Nutrition and Pathology Division,CMFRI,Kochi

13. Dr.Rani Mary George
Head, Marine Bio-diversity Division,CMFRI,Kochi

14. Dr.G.Gopakumar
Head,Mariculture Division Mandapam Research Centre of
CMFRI, Mandapam Camp
Near Rameswaram, Tamil Nadu

15. Dr.S.Ayyappan
Deputy Director General(Fisheries)
ICAR, Krishi Bhawan,New Delhi : Respondents

(By Advocate Mr.T.P.Sajan, (R 1-3)
Mr. P.Jacob Varghese (R 4)

6. O.A.No.383/2006

Dr.Prathibha Rohith
Senior Scientist,Mangalore Research Centre of CMFRI,
Mangalore - 1
Residing at : Satya Shreya,
Bannanje, Udupi : Applicant

(By Advocate Mr. T.C.Govindaswamy)

Versus

1. Indian Council of Agricultural Research through the Secretary
ICAR, Krishi Bhavan, New Delhi- 110 001

2. The Director General
Indian Council of Agricultural Research
Krishi Bhawan, New Delhi

3. The Director
CMFRI, Kochi

4. Dr.Mohan Joseph Modayil
Director, CMFRI, Kochi

5. Dr.E.Vivekanandan
Head, Demersal Fisheries Division,CMFRI,Kochi

6. Dr.E.V.Radhakrishnan
Head, Crustacean Fisheries Division,CMFRI,Kochi

7. Dr.N.G.K.Pillai
Head, Palagic Fisheries Division, CMFRI,Kochi

8 Dr.M.Rajagopalan
Head, Fishery Environment Management Division,
CMFRI,Kochi

9. Dr.M.Srinath
Head, Fishery Resource Assessment Division,
CMFRI,Kochi

10. Dr.R.Sathiadas
Head, Socio-Economic Evaluation and Technology Transfer
Division. CMFRI, Kochi

11. Dr.Sunilkumar Mohammed
Head, Molluscan Fisheries Division,CMFRI,Kochi

12. Dr.K.K.Vijayan
Head, Physiology Nutrition and Pathology Division,CMFRI,Kochi

13. Dr.Rani Mary George
Head, Marine Bio-diversity Division,CMFRI,Kochi

14. Dr.G.Gopakumar
Head, Mariculture Division,Mandapam Research Centre of CMFRI, Mandapam Camp,
Near Rameswaram, Tamil Nadu

15. Dr.S.Ayyappan
Director General(Fisheries),
Indian Council of Agricultural Research ,
Krishi Bhavan, New Delhi. : Respondents

(By Advocate Mr.T.P.Sajan, (R 1-3)
Mr. P.Santhosh Kumar (R 4 & 15)

7. O.A.No.390/2006

Dr. P.N. Radhakrishnan Nair
Principal Scientist,& Scientist-In-charge,
Research Centre of CMFRI, West Hill PO
Calicut
Residing at : Shreyas, Santhinagar,
East Hill PO, Calicut - 673 005 : Applicant

(By Advocate Mr. T.C.Govindaswamy)

Versus

1. Indian Council of Agricultural Research through the Secretary
ICAR, Krishi Bhavan, New Delhi.

2. The Director General
ICAR, Krishi Bhawan, New Delhi

3. The Director
CMFRI, Kochi

4. Dr.Mohan Joseph Modayil
Director, CMFRI, Kochi

5. Dr.E.Vivekanandan
Head, Demersal Fisheries Division,
CMFRI,Kochi

6. Dr.E.V.Radhakrishnan
Head, Crustacean Fisheries Division,CMFRI,Kochi

7. Dr.N.G.K.Pillai
Head, Palagic Fisheries Division, CMFRI,Kochi

8. Dr.M.Rajagopalan
Head, Fishery Environment Management Division,
CMFRI,Kochi

9. Dr.M.Srinath
Head, Fishery Resource Assessment Division,
CMFRI,Kochi

10. Dr.R Sathiadas
Head, Socio-Economic Evaluation and Technology
Transfer Division., CMFRI, Kochi

11. Dr.Sunilkumar Mohammed
Head, Molluscan Fisheries Division,
CMFRI,Kochi

12. Dr.K.K.Vijayan
Head, Physiology Nutrition and Pathology Division,
CMFRI,Kochi

13. Dr.Rani Mary George
Head(Addl.Charge), Marine Bio-diversity Division,
CMFRI,Kochi.

14. Dr.G.Gopakumar
Head, Mariculture Division,Mandapam Research Centre of
CMFRI, Mandapam Camp,
Near Rameswaram, Tamil Nadu : Respondents

(By Advocate Mr.T.P.Sajan, (R 1-3)
Mr. P.Jacob Varghese (R-4)

8. O.A.No.391/2006

Dr.Gulshad Mohammed
Scientist (Sr.Scale) Calicut Research Centre of CMFRI,
West Hill P.O .,Calicut - 5
Residing at : Nandanam, Karuvissery PO
CALICUT - 10 : Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Indian Council of Agricultural Research
through the Secretary
ICAR, Krishi Bhavan, New Delhi - 110 001

2. The Director General
Indian Council of Agricultural Research
Krishi Bhavan, New Delhi.

3. The Director
CMFRI, Kochi

4. Dr.Mohan Joseph Modayil
Director, CMFRI, Kochi

5. Dr.E.Vivekanandan
Head, Demersal Fisheries Division,CMFRI,Kochi

6. Dr.E.V.Radhakrishnan
Head, Crustacean Fisheries Division,CMFRI,Kochi

7. Dr.N.G.K.Pillai
Head, Palagic Fisheries Division, CMFRI,Kochi

8. Dr.M.Rajagopalan
Head, Fishery Environment Management Division,CMFRI,Kochi

9. Dr.M.Srinath
Head, Fishery Resource Assessment Division,CMFRI,Kochi

10. Dr.R Sathiadas
Head, Socio-Economic Evaluation and Technology Transfer
Division, CMFRI, Kochi

11. Dr.Sunilkumar Mohammed
Head, Molluscan Fisheries Division,CMFRI,Kochi

12. Dr.K.K.Vijayan
Head, Physiology Nutrition and Pathology Division,
CMFRI,Kochi

13. Dr.Rani Mary George
Head (Addl.Charge), Marine Bio-diversity Division,
CMFRI,Kochi.

14. Dr.G.Gopakumar
Head,Mariculture Division Mandapam Research Centre of
CMFRI, Mandapam.:Camp
Near Rameswaram, Tamil Nadu : Respondents

(By Advocate Mr.T.P.Sajan, (R 1-3)
Mr. P.Santhosh Kumar (R 4)

9. OA 392/2006

Dr.G.Nandakumar
Principal Scientist,
Central Marine Fisheries Research Institute, Kochi :
Residing at : 4 B Surya Kanthi Apartments
Iyyattil Junction, Chittoor Road
Cochin - 682 011 : Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Indian Council of Agricultural Research
through the Secretary
ICAR, Krishi Bhavan, New Delhi.- 110 001

2. The Director General
Indian Council of Agricultural Research
Krishi Bhawan, New Delhi

3. The Director
Central Marine Fisheries Research Institute
Kochi

4. Dr.Mohan Joseph Modayil
Director, CMFRI, Kochi

5. Dr.E.Vivekanandan
Head, Demersal Fisheries Division,CMFRI,Kochi

6. Dr.E.V.Radhakrishnan
Head, Crustacean Fisheries Division,CMFRI,Kochi

7. Dr.N.G.K.Pillai
Head, Palagic Fisheries Division, CMFRI,Kochi

8. Dr.M.Rajagopalan
Head, Fishery Environment Management Division,
CMFRI,Kochi

9. Dr.M.Srinath
Head, Fishery Resource Assessment Division,
CMFRI,Kochi

10. Dr.R.Sathiadas
Head, Socio-Economic Evaluation and Technology Transfer
Division., CMFRI, Kochi

11. Dr.Sunilkumar Mohammed
Head, Molluscan Fisheries Division,CMFRI,Kochi

12. Dr.K.K.Vijayan
Head, Physiology Nutrition and Pathology Division,CMFRI,Kochi

13. Dr.Rani Mary George
Head, Marine Bio-diversity Division,CMFRI,Kochi

14. Dr.G.Gopakumar
Head, Mariculture Division,Mandapam Research Centre of
CMFRI, Mandapam Camp,
Near Rameswaram, Tamil Nadu : Respondents

(By Advocate Mr.T.P.Sajan (R1-3)
Mr.P.Jacob Varghese (R-4)

The application having been heard on 20.07.2006, the Tribunal on 11-8-06 delivered the following :

ORDER

HON'BLE MR.K.B.S.RAJAN, JUDICIAL MEMBER

As all the above OAs have been filed challenging the same impugned transfer order dated 23-05-2006, a common order is being passed. For the purpose of reference, OA No. 378/2006 has been taken as the main case but, peculiar features available in the other OAs are, however, not lost sight of and the same too are reflected in the order.

2. Briefly, the facts of the case as narrated in the O.A. no. 378/06 are as under:-

(a) The applicant who joined Central Marine Fisheries Research Institute (CMFRI, for short) on 19.02.1986, was posted at the Mangalore Research Centre of CMFRI. He belongs to Demersal Fishery Division.

(b) Transfers will normally be made to correct imbalance in the cadre strength, to fill positions in high priority projects, to utilize the experience of Scientists, to post Scientists in backward or comparatively less developed areas in accordance with the provisions of Rule 20 (2) of the Agricultural Research Service Rules (ARS Rules, for short) and for administrative reasons.

(c) A Transfer Committee is to be set up and such transfers would be made only on the recommendations of the Transfer Committee. The Transfer Committee consist of the Director namely, the third respondent and all heads of Divisions.

(d) Fourth respondent is the incumbent of the office of the third respondent. Appointed for a period of five years, he was granted extension of tenure on reemployment of pensioner basis by office order dated 29.08.2005. Since the extension of tenure granted to the third respondent was illegal, arbitrary and out of extraneous consideration and ulterior motives, the applicant along with 16 other Principal Scientists/Senior Scientists approached this Tribunal by filing O.A. 823 0f 2005 challenging the extension of tenure granted to the third respondent. Ever since the case was filed, the fourth respondents has been illegally and arbitrarily harassing the applicant and other Scientists who are the applicants in OA 823 of 2005. In view of the constant harassment, this applicant had also filed M.A. For early hearing of the case specifically pointing out that the 4th respondent is making all efforts to arbitrarily and illegally transfer all the applicants. The 15th respondent, Dr. S. Ayyappan, Deputy Director General (Fisheries) of I.C.A.R., New Delhi, has also been hand in glove with all the illegal activities of the third respondent. The said respondent was in fact instrumental in seeing the

grant of extension of tenure to the fourth respondent. The fourth respondent in his capacity as the third respondent, called for a meeting of the Transfer Committee on 23.05.2006. Right from the very beginning the fourth respondent was showing a hostile attitude. The proposal for transfer submitted by each heads of Division was totally rejected. It is the definite information from the co-applicants in O.A. 823 of 2005, that the fourth respondent read out a list of transferees which included 7 of the 17 applicants in O.A. 823 of 2005. It is reliably learnt that all the members of the Transfer Committee who formed the heads of the respective Divisions and or in the scale of pay as that of the Director objected to the proposal put forth by the fourth respondent since the same was totally arbitrary, illegal and against the very interest of CMFRI.

(e) The applicant was the project leader of Marine Bio-diversity Division of Karnataka and Goa and has done enormous service on various consultancy projects.

3. The details of other applicants are as under:-

(a) The applicant in OA No. 379/06, presently working as Senior Scientist at Cochin, is transferred to Vishakapatnam. He belongs to Fishery Environment Management Division. His wife is employed as District Education officer at Kochi.

(b) The applicant in O.A. No. 380/06, presently working as

Senior Scientist at Mangalore, is transferred to Veraval in Gujarat. He belongs to Fishery Environment Management Division. He has a widowed mother aged about 78 years and two children studying in Xth standard and LKG at Managalore.

(c) The applicant in O.A. No. 381/06, presently working as Principal Scientist at Chennai, is transferred to Veraval in Gujarat. He belongs to Demersal Fishery Division.

(d) The applicant in OA 382/06, presently working as Principal Scientist at Cochin, is transferred to Tuticorin. He belongs to Molluscan Fishery Division. Tuticorin is a place, where the applicant had worked for more than 16 years.

(e) The applicant in O.A. 383/06, presently working as Senior Scientist at Mangalore, is transferred to Visakhapatnam. She belongs to Pelagic Fisheries Division. Husband is employed as Lecturer in Udupi. Two girl children are studying in 9th and 7th standard respectively.

(f) The applicant in OA 390/06, presently working as Principal Scientist and also Scientist In-charge of Research Centre of CMFRI, West Hill, Calicut, is transferred to Minicoy. Self and wife are sick. There is only one Scientist in Minicoy. The applicant belongs to Pelagic Fishery Division.

(g) The applicant in O.A. 391/06, presently working as Scientist (Senior Scale) at Calicut, is transferred to Veraval in Gujarat. He belongs to Mariculture Fishery Division. His initial appointment was at Jhansi in Indian Grassland and Fodder Research Institute. He came to CMFRI, Minicoy, in the year 1996 and was transferred

to Calicut on request during 2000.

(h) The applicant in O.A. 392/06, presently working as Principal Scientist at Kochi, is transferred to Veraval in Gujarat. He belongs to Crustacean Fishery Division.

4. The respondents have resisted the O.A. Their stand, as contained in the reply is as under:-

(a) That the transfers of employees who are recruited on All India basis are required to be resorted to in exigency of work to correct the imbalance in various areas and also to fill positions in high priority areas for better implementation of the programme undertaken by the Organization, as per the prescribed service conditions.

(b) That the transfer of Scientists at the Institute is a regular affair being undertaken annually based on review of the overall staff strength vis-a-vis the research priority at different centres.

(c) That the holding of Transfer Committee meeting this years was delayed because of the recent election process to the State Legislative Assembly declared by the Election Commission.

(d) That the detailed discussions were held in the Transfer Committee meeting held on 23.05.06 and in all, 27 cases including 8 request transfers were considered by the Committee. It is submitted that in the Transfer Committee, the Heads of Divisions had expressed their views in regard to the transfer of Scientists. Based on the detailed deliberations held in the meeting and considering the overall interest of the research work

undertaken by the Institute and for administrative reasons, the Director of the Institute who is competent to order intra-institutional transfers of Scientific personnel had taken a most appropriate and judicious decision to transfer 17 Scientists so that critical scientific mass at the various centres will be better balanced to some extent.

(e) The transfer of the applicant is strictly in conformity with the provisions of transfer policies stipulated in the ARS Service Rules.

(f) The transfer order is not actuated by malafide or for ulterior reasons as alleged by the applicant.

5. As perusal of original records was found expedient for deciding the controversy, the respondents were directed to produce the records and the same were produced by the counsel for respondents.

6. The relevant provisions of Transfer are extracted in para 6 of the Reply and for the purpose of convenience, the entire paragraph is extracted below:-

"6. .... The transfer will be made in the following circumstances:

(i) To correct imbalance in the cadre strength of Scientists in various disciplines at different Institutes and also within an Institute including regional stations;

(ii) To fill positions in high priority projects, direct recruitment to which through the Agricultural Scientists' Recruitment Board may result in delay, in the implementation of programmes;

(iii) To utilize the experience of Scientists in appropriate fields;

(iv) To post Scientists in backward or comparatively less developed areas in accordance with the provisions of Rule 20(2) of the ARS Rules; and

v) For administrative reasons.

Tenure of Posting: The tenure of posting will normally be 5 years in the first group, 4 years in the second group and 3 years in the third group. The Scientist on completion of his tenure of five years in the first group will be transferred to the third group and on completion of three years tenure in that group to the second group and then to the first group and so on. If any Scientist working in second or third group i.e., category 'C', 'D' and 'E' stations does not want to be disturbed, he may be allowed to continue in those stations. A Scientist is required to spend at least a minimum of three years in group three stations, i.e. Category 'D' or 'E' station during his entire career.

Scientists over 55 years in age may not be disturbed from their existing places of their work without their consent as far as possible.

Time of Transfer: As far as possible, transfers be normally be made by the end of March when the academic session of the Schools and Colleges will come to a close so as not to disturb the education of the children."

7. A perusal of the transfer order reflects that the period of stay at a particular station ranges as under:-

Less than 5 years:	3
Between 5 to 10 years:	6
Beyond 10 years	8

8. I have perused the entire records. The Transfer Committee has dealt with the case of the applicant as under:-

Dr. P.V. Zacharia, Senior Scientist - Transferred to TUTICORIN	Presently there is no DFD Scientist at Tuticorin. The research on Demersal Fisheries at Tuticorin is adversely affected by this. This cannot be overlooked. The effective implementation of the mandate of the Institute is affected by the absence of a DFD Scientist at Tuticorin. Therefore, Dr. Zacharia who has served at Mangalore for 20 years can be posted to Tuticorin while the work at Mangalore will be carried out by Shri Raje who is transferred from Mumbai Research Centre where there are two DFD Scientists and one of them can be safely redeployed without affecting ongoing research work. This way the research work of DFD at Tuticorin, Mangalore and Mumbai can be suitably addressed and will result in better research outputs.
Dr. P. Kaladharan, Senior Scientist - Transferred to VISAKHAPATNAM	Consequent to the transfer of Shri Vijayakumaran from Visakhapatnam to Mangalore, it has become necessary to post a Scientist of the FEMD to Visakhapatnam to carry out ongoing research of the Division. Dr. Kaladharan has completed 11 years at the HQ where there are three other Scientists from the same Division. Dr. Rajagopal is HOD, therefore, cannot be shifted; Dr. Chandrika is about to retire; Dr. Prema has completed 8 years, as against Dr. Kaladharan who has completed 11 years at HQ. Therefore, he can be shifted to Visakhapatnam where there is no FEMD Scientist consequent to the present redeployment.
Dr. P.K. Krishnakumar, Senior Scientist - Transferred To VERAVAL	Presently there is no Scientist belonging to FEM Division at the Veraval Regional Centre. Being a Regional Centre, representation of all major Divisions is necessary to carry out research activities on issues of local importance and researchable issues emerging. Dr. Krishnakumar has sufficiently long and adequate experience in environmental research at Mangalore for over 11 ¾ years and his presence in Veraval will initiate, organize and develop the research on fisheries environment related aspects in the whole of Gujarat coast which at present is lacking. Since Shri Vijayakumar is posted to Mangalore, there will not be any loss of research work at Mangalore due to the transfer of Dr. Krishnakumar.
Dr. Mohanraj, Principal Scientist - Transferred to VERAVAL	Dr. Somashekharan Nair who is the SIC at Verval is a Demersal Fisheries Scientist and will be retiring from service in February, 2007, before the next annual meeting of the Transfer Committee. Therefore, there is need to post a Dimersal Fisheries Scientist at the Regional Centre at Veraval, which is the most important Demersal capture fisheries centre in the country. The absence of a Scientist belonging to the Demersal Fisheries Division will seriously hamper the research work of the Institute in Veraval which is a Regional Centre. At the Chennai Research Centre there are two Demersal Fisheries Scientists, of whom Dr. Mohan Raj had served 6 ¾ years while the other served only 3 years. Therefore, Dr. Mohan Raj can be redeployed to Veraval who can also take charge as SIC on the retirement of Dr. Somashekharan Nair in early 2007. This will result in giving the required attention for Demersal Fisheries Research at Veraval.

Dr.Velayudhan, Principal Scientist – Transferred to TUTICORIN	The Institute has for the first time in the World developed a technique for tissue culture of pearl at the Tuticorin Centre under the guidance of Dr. Dharmaraj who has recently retired. There is need to post a Scientist who has good experience on pearl oysters and pearl culture to guide the work of Smt. Suja, Technical Officer, who was carrying out the tissue culture work. A junior Scientist who has no experience on pearls cannot be posted to Tuticorin to supervise work on tissue culture of pearls. Therefore, posting Dr. Laxmilatha to Tuticorin as suggested by HOD is absolutely useless as she had no experience on pearls, a fact admitted by HOD himself. Therefore, Dr. Velayudhan who is well versed in pearl oyster research is the right Scientist who can supervise, guide, motivate and plan for future development of this new area of research at Tuticorin. He has already served at the Headquarters for over 14 years and routine work at the HQ can be carried out by the Head of Division. If needed, Venkatesan from Mandapam can be shifted to the Headquarters for assisting the HOD. Thus, Dr. Velayudhan is the only Scientist with expertise in pearl research who can be posted to Tuticorin and whose expertise can be effectively utilized. This is a very important area and no compromise on research efforts or quality of work is agreed to.
Dr. Prathibha Rohit, Senior Scientist – Transferred to VISAKHAPATNAM	Visakhapatnam is a Regional Centre of CMFRI where research on Pelagic Fisheries, especially Tuna is very important and this is not being currently addressed as the Scientist posted is on unauthorized absence for the past two years. This has resulted in loss of valuable data and information and, therefore, the Institute has to post a suitable Scientist immediately for addressing the pelagic fisheries research at Visakhapatnam. At Mangalore Centre, presently there are two Scientists belonging to the Demersal Fisheries Division, both having completed 14 years at the Centre. Dr. Muthiah is the Scientist in Charge who is also looking after the administrative responsibilities. The other Scientist Dr. Prathibha Rohit who has served for 14 years at this Centre can be shifted to Visakhapatnam as she has enough background and expertise in the pelagic fisheries research and will be able to carry out the pelagic fisheries research at Visakhapatnam, thus satisfying the research mandate of the Institute at this Centre.

Dr. P.N. Radhakrishnan Nair, Principal Scientist – Transferred to MINICOY	Dr. P.N. Radhakrishnan Nair is Principal Scientist with experience in Pelagic Fisheries. He is also the Scientist in Charge of the Research Centre at Calicut. Since the Pelagic Fisheries Scientist Shri Said Koya, who is also the Scientist in Charge, Minicoy, had requested for a transfer to mainland Calicut, placing a suitably capable Scientist to Minicoy was mandatory. The focus of research at Minicoy Centre is on pelagic fisheries research such as Tunas. Dr. Nair has considerable experience in pelagic fisheries research and also has administrative experience as Scientist in Charge at Calicut. The other Scientists with such experience at other Centres namely, Dr. Pillai (HOD), Dr. Kasim (SIC at Chennai), Dr. Muthiah (SIC at Mangalore), Dr. Kurian (about to retire within 9 months), Dr. Prathibha Rohit (Woman Scientist), Dr. Khan (about to retire), Dr. Jayaprakash (Editor), Dr. Sivadas (already served in Minicoy), Dr. Abdusamad (already under transfer) cannot be transferred to Minicoy. Therefore, the only option is to relocate Dr. Nair to Mincoy to serve as Scientist in Charge as it is mandatory to oblige the transfer request of Scientist (Said Koya) placed in the remote area (Minicoy) after completion of 4 years.
Dr. Gulshad Mohamed, Scientist (Sr. Scale) – Transferred to VERAVAL	Dr. Gulshad Mohammed has considerable experience in seaweed culture. Presently this is becoming a liveli hood activity in the Gujarat region. There is need for scientific research and extension among the fisherfolk in the Gujarat area for cultivation of seaweeds. Since there are already three Scientists belonging to Mariculture Division at Calicut and one more has been now posted, the expertise of Dr. Gulshad Mohamed can be better utilized at the Veraval Centre where mariculture work, especially on seaweed culture, need strengthening. Also, Calicut Centre is overstaffed, there are 11 Scientists against an approved strength of 7. Thus Dr. Gulshad's services will be better utilized at Veraval to carry out mandated mariculture research work.
Dr. Nandakumar, Principal Scientist - Transferred to VERAVAL	VERAVAL is an important fishing Centre for shirmps (Crusteaceans). Presently there is no Crustacean Fisheries Scientist in the Veraval Research Centre. Research on Crustacean Fisheries is not addressed at Veraval as Smt. Rekha Devi who was doing this work was transferred from Veraval to Mandapam on humanitarian considerations consequent to her marriage with fellow Scientist posted at Kochi. At the Headquarters, there are 4 Scientists belonging to the Crustacean Fisheries Division, of whom Dr. Nandakumar has completed the maximum period of 20 years in Kochi. The work in the HQ can be well addressed by the remaining 3 Scientists and Dr. Nandakumar's services are much needed at Veraval where tehre is no Crustacean Scientist at present to carry out the mandated research work. Therefore, in the interest of work, he may be transferred to Veraval without adversely affecting any ongoing research activities.

The above have been discussed at length ~~and~~ taking a judicious decision, keeping in view the institutional interest on the one hand and the requests of the applicants on the other. No fault can be found in the decision. Rather, the deep consideration given by the Transfer Committee and the dispassionate decision arrived at by them after such deliberation, indeed deserves full appreciation.

9. It is settled law that in matters of transfer judicial intervention is comparatively limited and the grounds of malafide, violation of professed norms as held in the case of ***State of U.P. v. Ashok Kumar Saxena, (1998) 3 SCC 303,*** wherein the Apex Court has held as under:-

> *"The parameters of the powers of a court under Article 226 vis-a-vis an order of transfer are well settled. In N.K. Singh v. Union of India (1994) 6 SCC 98 this Court held that interference by judicial review is justified only in cases of mala fides or infraction of any professed norms or principles and where career prospects remain unaffected and no detriment is caused to the government employee concerned, challenge to the transfer must be eschewed. Reiterating the said proposition in Abani Kanta Ray v. State of Orissa (1995) Supp 4 SCC 169 the Court added that transfer being an incidence of service, is not to be interfered with by the courts unless it is shown clearly arbitrary."*

10. In a comparatively recent decision in the case of ***National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan,*** *(2001) 8 SCC 574,* the Apex Court has prescribed the area of intervention by the courts

and tribunals in matters of transfer. The Apex Court has observed as under:-

> *"It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned."*

11. The counsel for the applicant vehemently argued that malafide smacks in the entire action of the respondents. In order to substantiate his contention, he has submitted that the applicant is one of the petitioners in another OA 823/05 wherein the challenge was against the extension of tenure of Respondent No. 4 and that case was listed for final hearing on 24th May, 2006 and the present transfer is dated 23rd May, 2006. Thus, the very timing of the transfer order proves the malafide intention of Respondent No. 4. It was also alleged that the suggestions of various members of the Committee were all ignored while passing the impugned order. With particular reference

to this ground, the records relating to transfer have been verified. The chronological sequence of events is as under:-

Date	***Event***	***Remarks***
13-02-2006	Draft circular calling proposals from HODs for redistribution/redeployment of scientific staff during 2006 - 2007 was put up. Last date for submission of proposals was 10-03-2006.	This circular had not evinced much response from HODs as stated in a subsequent note of 23-03-2006 and the matter was to be considered in April, 2006.
22-03-2006	Four scientists (2 from Mandapam, one from Karwar and one from Minicoy) applied for transfer to Cochin/Calicut.	Three of the scientists were transferred. Transfer application by scientist at Karwar was to be kept in abeyance as it was thought that the same could be considered only when the on the closure of Karwar unit takes place. This was with a view to retain the sanctity of the previous year Transfer Committee's decision.
30-03-2006	One more scientist asked for transfer.	Director remarked that the case be put up to the Transfer committee in its next meeting.
02/05/06	Office note put up to the Director for fixing a convenient date for convening the Transfer Committee Meeting.	
12/05/06	Decision of Director to have the Transfer Committee Meeting convened at 2.30 p.m. on 23rd May 2006 .	

Date	Event	Remarks
23-05-2006	Meeting held and decision taken and transfer order issued.	
16-06-2006	Note put up with the requests of some scientists for deferment of their transfer for a specific period. Two scientists had also requested for cancellation of their transfer order.	Remarks of the higher authority that there are some more applications from scientists regarding extension/ cancellation of transfer orders and hence, directing the office to re-examine and put up.
19-06-2006	Request letters for cancellation/ extension of time, put up with a tabular statement.	Extension in respect of a few approved. In respect of one of the Scientists at Mandapam, who wanted to stay back there, his request was also acceded to.

12. When the above is the sequence of events, contention that the transfer order dated 23rd May, 2006 was effected as the very next day was the probable final hearing day in respect of OA No. 823/2005 is nothing but a surmise and conjecture. There is absolutely no co-relationship between the final hearing in OA 823/2005 and the transfer order.

13. The counsel for the applicant argued that the transfer order is vitiated as the same is violative of the stipulations that Scientists over 55 years in age may not be disturbed from their existing places of

work without their consent as far as possible. When uniformly the above has not been considered and when the applicant has not been discriminated in regard to this compared to others, he cannot derive any legal rights for agitating the same.

14. One more objection raised by the learned counsel for the applicant was that there has been no reference to the number of years served at one station in the previous transfer orders and inclusion of the same int he current order of transfer would indicate malafide. This argument merits only rejection. For, such a stipulation makes more transparent and such a transparency if earlier was absent and now introduced, the same only goes to show improvement in the procedure being adopted.

15. The justification given in the minutes of the meeting is the most reasonable, keeping in view the institutional interest on the one hand and the individual interest on the other. As held by the Apex Court in the case of ***State of U.P. v. Ashok Kumar Saxena, (supra)*** , judicial interference in matters of transfer could be justified only in exceptional cases. Non interference in transfer matters is the rule and judicial intervention is an exception, subject to the transfer being

either arbitrary or accentuated by malafides or infraction of professed norms. Such an exception in the instant cases (save in respect of OA No. 390/06 P.N. Radhakrishnan Nair) not being available, the transfer orders are held to be fully justified from the point of view of transfer norms in respect of all the applicants except applicant in OA 390/06. In that case, while the normal tenure is 5 years ~~but~~ the applicant has served at Calicut (a group A area) only for a period of 3 years plus. However, it has to be seen whether there is any justification in respect of this transfer. Reason given by the respondents for the transfer of this Principal Scientist as extracted above is to accommodate Shri Said Koya, who was to be transferred from Minicoy to Calicut. The question, therefore, is whether such a transfer meant for accommodating a particular individual would be justified. Answer to this question is available in the decision of the Apex Court in the case of ***Shilpi Bose (Mrs) v. State of Bihar, 1991 Supp (2) SCC 659***, wherein the Apex Court has held as under:-

> *"The High Court did not interfere with the order of the transfer on this ground instead it held that the transfer orders were without jurisdiction as the same had been made on the appellants' request with a view to accommodate them. We fail to appreciate the reasoning recorded by the High Court. If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same*

cannot and should not be interfered by the court merely because the transfer orders were passed on the request of the employees concerned."

16. In the instant case, as Dr. Said Koya was at a remote area and he had completed his tenure, rules provide for accommodating him at a place of his choice and it is this reason that has been recorded in the decision by the Chairman of the Transfer Committee. Further, the Chairman of the Selection Committee has rather commented upon the caliber and efficiency of the applicant (Dr. P.N. Radhakrishnan Nair) stating, "*Dr. Nair has considerable experience in pelagice Fisheries research and also has administrative experience as Scientist-in-charge at Calicut.*" The Chairman has also reflected as to why alone Dr. Nair should be transferred to Minicoy and why not other Scientists with comparable caliber and efficiency. As such, taking into account the administrative exigency, notwithstanding the fact that in so far as Dr. Radhakrishnan Nair's transfer is concerned, his transfer is before the expiry of the stipulated period of five years, his transfer is also justified. Consequently, the O.A. Nos. 378/06, 379/06, 380/06, 381/06, 382/06, 383/06, 390/06, 391/06 and 392/06 are dismissed . The authorities may, however, revalidate the transfer orders, or may issue fresh relieving orders, should the same be necessary for the purpose or drawal of any transfer T.A etc., and for joining time.

17. Vide para 3 of the order, certain domestic circumstances have been spelt out to justify retention. It is not exactly known whether these were taken into account by the respondents. It is purely left to the respondents to consider the same but this observation cannot be taken as a direction for such consideration nor can the same be a ground for not effecting the impugned transfer order. Acceptance or rejection of the same and effecting the transfer order or otherwise during such consideration is left to the absolute discretion of the respondents.

18. Under the circumstances, there shall be no order as to costs.

(Dated, 11th August, 2006)

K B S RAJAN
JUDICIAL MEMBER

cvr.