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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

R. P. No. 4/91 in
O.A. No. 1010/90
T.A.No.

Date of Decision : Jan. 1991

M. Chidambara Swamy Petitioner.
Shri Y. Suryanarayana Advocate for the
petitioner (s)
Versus
Director, CRIDA, Hyd., and others Respondent.
Sri E. Madan Mohan Rao, Addl. CGSC Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. B.N. JAYASIMHA, VC

THE HON'BLE MR. J. NARASIMHA MURTHY, MEMBER (J)

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 Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

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(HBNJ)


(HJNM)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT : HYDERABAD

R.P. No. 4/91 in
in O.A. No. 1010/90

Date of order: 31-1-91

Between

M. Chidambara Swamy

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Applicant

Vs.

1. Director of CRIDA,
Santhoshnagar,
Hyderabad.

2. The Officer-in-Charge,
KVK (CRIDA) Hayathnagar,
Hyderabad.

3. Indian Council of Agri-
Cultural Research rep. by its
Director General, Krishi Bhavan,
New Delhi

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Respondents

Appearance

For the Applicant : Mr. Y. Suryanarayana, Advocate

For the Respondents : Mr. E. Madan Mohan Rao, Addl.CGSC

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Coram

The Hon'ble Shri B.N. Jayasimha, Vice Chairman

The Hon'ble Shri J. Narasimha Murthy, Member(J)

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(Judgement of the Bench delivered by Hon'ble Shri J.
Narasimha Murthy, Member(J))

This is an application for review of our order
dt. 24.12.1990 in O.A. No. 1010/90.

2. The O.A. No. 1010/90 was dismissed as premature
and we had observed as follows:

"The applicant is attributing motives
in person to the former and the pre-
sent directors. He refers to some
assurance given to him by the present
director in the home of the advocate
Shri Suryanarayana as a quid pro-quo
for taking him to the advocate in
regard to his (Respondents) grievance
against administration. Again he
contends that there are no posts of
T.6 at Gunegal. When he challenged
the order earlier, he did not raise
the issue of availability of posts,
etc., All these matters can be looked
into by the DG, ICAR to whom the app-
licant can make a representation.
Observations of the Supreme Court
apply. The applicant should therefore
first represent his grievance to the
Higher Departmental authority before
filing this application.

In the result, the application is dis-
missed as premature. No order as to
costs."

We had relied on the judgement of the Supreme Court
in Gujarat Electricity Board & another Vs. Atmaram
Sungomal Poshani (AIR 1989 SC 1433).

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3) The following grounds are raised in this Review Petition.

i) The principal contention that Respondent No.1 had no power or jurisdiction to transfer and post the applicant to Gunegal Research Farm where there is no T-6 post, has been overlooked.

ii) The order does not explain the basis for holding O.A. No.1010/90 as premature as the material placed shows that there was no post of T-6 at Gunegal Research Farm. In the earlier O.A.s filed by the applicant the orders were passed in O.A.692/90 and 868/90, the contention of the applicant was upheld and the transfer orders passed earlier were held illegal.

iii) No reliance was placed on the decision of the Supreme Court reported in AIR 1989 SC 1433 when the Tribunal considered the earlier application of the applicant challenging the transfer order. It is surprising that the Division Bench has placed reliance on the decision of AIR 1989 SC 1433 for rejecting OA 1010/90.

iv) There is no statutory right of appeal provided to O.G., of ICAR against the order which was impugned in OA No.1010/90. There is therefore no alternate remedy. Further the fact that the applicant had not availed the alternative remedy cannot be the ground for dismissing the application. Section 20 of the Administrative Tribunals Act is not a bar for filing the O.A., as indicated in the

in the Full Bench decision of this Tribunal in OA No.27/90 dt.12-4-1990.

v) The only question that was urged before the Tribunal was that the post of T-6 (Agronomy) was sanctioned for KVK scheme and there is no T-6 post in the Gunegal Research Farm. Without dealing with this question the Tribunal went on referring irrelevant matters. The counsel had not laid any stress on other allegations made at the time of hearing and therefore the order is not sustainable.

vi) The observation made that the point now raised in OA 1010/90 was not raised in OA 868/90 is erroneous for the reason that whether there was a T-6 (Agronomy) post in the Gunegal Research Farm never arose nor was it necessary to decide in OA 868/90.

3. We have heard the learned counsel for the applicant Shri Y.Suryanarayana and Shri E.Madan Mohan Rao, learned standing counsel for the department. Shri Madan Mohan Rao, states that after the judgement was delivered on 24-12-90, on the very same day i.e. on 24-12-90 the learned counsel for the applicant in his letter sought that the case be posted for being mentioned and had stated as follows :-

"The judgement in the above OA was pronounced to-day i.e. on 24-12-90. The Division Bench held that the O.A. was premature and that the applicant should make a representation to D.G., ICAR, New Delhi.

I forgot to request the Division Bench to fix a time limit of one month for disposing of the representation to be made by the applicant.

Kindly direct the office to post OA 1010/90 before a Division Bench consisting of Hon'ble Vice-Chairman and Hon'ble J.Narasimha Murthy, Member (J) on 2-1-91 for being mentioned."

Accordingly the matter was posted before the Bench on 10-1-91 at which considerable argument was advanced by the learned counsel for the applicant. He states that the learned counsel for the applicant had placed before the court a copy of his representation dt.6-1-91 and had urged that a direction be issued fixing a time for disposal of the representation by the D.G., ICAR. The learned counsel for the applicant had also urged that pending disposal of the representation by D.G., ICAR, the order of transfer should be suspended. After hearing the matter the Tribunal passed the following order :-

"After giving our due consideration to the submissions and having regard to the facts of the case and circumstances, we direct the Director General, ICAR, New Delhi to dispose of the representation within six weeks from the date of receipt of this order. We however see no reason to accept the request of the learned counsel of the applicant for retaining him in the Hayathnagar Research Farm."

Shri Madan Mohan Rao submits that a review application cannot be entertained as the applicant had already argued the matter after the delivery of judgement and had sought further direction following the judgement of the Court in OA 1010/90.

4. Shri Y.Suryanarayana states although it is correct that he had requested for the case being placed before the bench for being mentioned and he had argued for fixing of a time limit for the disposal of the representation to DG, I&CAR made by the applicant and also for stay of the transfer order, he is not barred from filing a review application. He states that the applicant although had urged several grounds in challenging the order of transfer, he had in the course of the arguments restricted his challenge only on the ground that post of T-6 (Agronomy) had been sanctioned for KVK Scheme and there was no post in the T-6 grade (agronomy) in the Gunegal Research Farm. In support, he had produced documents showing the posts sanctioned in these Organisations. He contends that this Court ought to have dealt with this point alone without referring to other points stated in the application. He, therefore, contends that this Court ought not to have considered and the other points urged in the application/the court has therefore went on referring to irrelevant matters. He argued that the Court ought to review the application by considering the only question whether there is a T-6 post in Gunegal Research Farm ignoring the other points urged in the main application. Shri Suryanarayana further argued that the Supreme Court decision in Gujarat Electricity Board case was rendered in the year 1989 and this judgment was not relied upon in the earlier OA's filed by the applicant and the Tribunal should not have relied upon that judgment in the present OA.

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5. Shri Madan Mohan Rao argued that the points raised now viz., the power of Respondent no.1 to transfer ~~and~~ the applicant, the availability of T-6 post are all matters which fall within the competence of the DG, ICAR. As regards relying upon the decision in Gujarat Electricity Board (AIR 1989 SC 1433) ~~are~~ Shri Madan Mohan Rao states the fact that the law laid down by the Supreme Court was not applied earlier is no bar for him to urge that that law be applied now. Neither is the court barred from applying the law when it is brought to its notice. Where and how the posts sanctioned in the various establishments are to be operated is an administrative matter and it is not for this court to decide whether a T-6 post should be kept only at a particular place.

6. As regards to the Full Bench decision of this Tribunal in O.A.27/90, referred to by learned counsel for the applicant, Shri Madan Mohan Rao points out that the matter that come up before the Bench was whether a party is entitled to approach the Tribunal even before the expiry of six months period allowed for the disposal of appeal or representation and the Full Bench over-ruled the decision of the Chandigarh Bench in Sital Singh's case wherein it was held that there is no bar in Section 21 of the Administrative Tribunals Act to filing an application earlier. While considering this issue the Bench noted that the power to entertain an Application under Section 19 of the Act even before exhaustion of the statutory remedy of appeal, etc., in service matters

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is not the usual feature but an extra-ordinary, unusual or uncommon feature. As indicated above, this power to entertain an application under section 19 of the Act even before availing of the remedy cannot be exercised generally or always. This leads to the conclusion that no application under section 19 of the Act should ordinarily be admitted unless the applicant has exhausted the alternate remedy and such application will be rejected or declined as premature. He, therefore, states that the Full Bench decision supports the view taken by this court in asking the applicant to prefer a representation to the DG, ICAR before coming to this Court.

7. As regards the contention that the applicant had urged the only question viz., there was no post of T-6 (Agronomy) and that was not dealt with by the Tribunal and the Tribunal went on to refer to irrelevant matters, Shri Madan Mohan Rao submits that where an employee challenges an order of transfer, all the points urged by him in the application are to be taken into consideration. It is well settled that transfer is an incident of service and it is only in cases where it is shown that the order is malafide or passed on extraneous considerations, then courts will interfere. In this case the applicant had made certain allegations against Respondent no.1 and that Respondent no.1 had acted in colorable exercise of power in issuing the order of transfer. Shri Madan Mohan Rao further urges that the contention of the learned counsel for the applicant that he had given up all other contentions except the question of availability of T-6

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post is accepted, the OA itself has to be dismissed.

The main attack on the validity of the transfer order based on the ground that Respondent No.1 had passed the order on collateral consideration and not in public interest no longer survives and the case rests on the only question whether the transfer order could have been issued transferring the applicant to Guneagal Farm where according to the applicant a T.6 post does not exist. Where and how the sanctioned of work is fully within the administrative judgment of the respondents and it is open to the respondents to adjust the posts from one wing to the other. It is not for the court to decide where a particular post should be utilised in the interest of exigencies of work.



8. Shri Madan Mohan Rao further states that it is interesting to note that while the applicant in his Review Application states that the learned counsel for the applicant had argued only the question relating to availability of T-6 posts and not other points urged in the application, in his representation addressed to the Director General, ICAR which he submitted after the judgement in OA 1010/90 was pronounced, he has urged all the points that he had raised in OA 1010/90 and not restricted himself to the question of availability of T-6 post. The contention that he had given

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up all the other contentions and argued only the question relating to availability of T-6 posts needs to be considered in this background and it cannot be said that this court went on considering the irrelevant material. The Court had considered only the points urged by the applicant in his application. Further when the matter was heard on 10-1-91 at the instance of the letter dt.24-12-1990 of the learned counsel for the applicant for fixing a time limit for the disposal of the representation to be made by the applicant, no mention was made that the applicant's contentions other than the availability of T-6 posts should have been considered by the Tribunal.

9. We have given our careful consideration to these submissions. We have already held on all the points raised by the applicant including the availability of T-6 post can be looked into by the DG, ICAR and therefore the applicant should first make a representation to the DG, ICAR. After the judgment, after considering the plea of the applicant that a time limit should be fixed for disposal of the representation, we also directed the DG, ICAR to dispose of the representation within six weeks. On the submissions made in

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the review application, as rightly urged by Shri Madan Mohan Rao, if the applicant is seeking to question the order of transfer on the only ground that there is no T-6 post sanctioned for Gunegal Farm, we see no merit in that contention. It is for the respondents to operate the sanctioned posts where exigencies of work demand and it is not for the Courts to give directions to respondents as to how or where the posts will be operated and that an administrative decision to be taken. The applicant has a liability to serve any where in India and so long as the order is not passed on extraneous considerations, that order is not liable to be interfered with. In the result, we find no merit in this application and we accordingly dismiss the same.

B.N.Jayasimha
(B.N.JAYASIMHA)
Vice-Chairman

J.N.Murthy
(J.N.MURTHY)
Member (J)

Dated: 31st January, 1991.

mvs/avl/sqh

To.

To

1. The Director, of CRIDA, Santoshnagar, Hyderabad-659.
2. The Officer-in-charge, KVK(CRIDA) Hayathbagar, Hyderabad.
3. The Director General, Indian Council of Agricultural Research, Krishi Bhavan, New.Delhi-210001.
4. One Copy to Mr.Y.Suryanarayana, Advocate, 40 MIGH, Housing Board Colony, Mehdipatnam, Hyderabad-500028.
5. One Copy to Mr.E.Madan Mohan Rao, Addl.CGSC, CAT., Hyd.
6. One Spare Copy.

Y.Suryanarayana
S.Y.Rao(S.I.Y.S)

VGB.