

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD.

O.A.No.1010 of 1990

Dt. of Decision: _____

Between:-

M.Chidambara Swamy ..

Applicant

and

1. Director, CRIDA, Santoshnagar,
Hyderabad-659.
2. The Officer-in-Charge, KVK,
(CRIDA), Hayathnagar, Hyderabad.
3. Indian Council of Agricultural
Research, represented by its
Director-General, Krishi Bhawan,
New Delhi-110001. ..

Respondents

Appearance:-

For the Applicant : Shri Y.Suryanarayana, Advocate.

For the Respondents : Shri E.Madan Mohan Rao, Addl.
Central Govt. Standing Counsel

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI J.NARASIMHA MURTHY, MEMBER(J).

(ORDER OF THE DIVISION BENCH DELIVERED BY HONOURABLE
SHRI J.NARASIMHA MURTHY, MEMBER(JUDICIAL))

1. The applicant is a Technician T-6 (Agronomy) in the Central Research Institute for Dry Land Agriculture, Hyderabad. This application is directed against the order of the 1st respondent dated 30-11-1990 transferring the applicant to the ~~Gunugad~~ Research Farm with immediate effect and until further orders in public interest.

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2. The applicant states that he was recruited under the respondents as Technician T-2 w.e.f. 21-3-1970. Subsequently he was selected as a direct recruit by the Agricultural Scientists Recruitment Board of the ICAR and was appointed as Technician T-6 (Agronomy) w.e.f. 12.1.1979. In the appointment order he was initially posted as T-6 (Technician, Agronomy) at KVK, Hayathnagar, Hyderabad, and it was also stated that he would be liable to be posted to any grade T-6 assignment anywhere in India. As the applicant was denied promotion year after year by the former Director (Dr.R.P.Singh) of CRIDA, he filed O.A.812 of 1989 before this Tribunal, which is pending. Dr.R.P.Singh retired on 31-3-1990, but prior to his retirement, he transferred the applicant from the post of Technician T-6(Agronomy) in category III at KVK, Hayathnagar, to a lower post of Technician T-5 in category II as Farm Superintendent of Gunegal Research Farm near Ibrahimpatnam by his order dated 28.2.1990. The applicant challenged the same through O.A.189 of 1990 and the transfer order was stayed by this Tribunal until further orders.

3. After taking charge as Director from Dr.R.P.Singh, the respondent No.1 requested the applicant to take him to the applicant's Advocate (Shri C.Suryanarayana). Respondent No.1 had some discussions and gave to the Advocate copies of the office note No.2.1, dt.31-3-1990 and form GFR-33 relating to transfer of charge of Director's office, CRIDA, and the telex message from Shri O.P.Kumar of AGRISEC, New Delhi. He told Mr.C.Suryanarayana, Advocate, that Dr.R.P. Singh was likely to visit Hyderabad on 12.4.1990 to write the CCRs and complete

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certain records which he did not do before his retirement and requested the advocate to file a case to prevent the said Dr. R.P. Singh from handling any records and files of CRIDA. Shri C. Suryanarayana, Advocate, kept quiet. But later, the 1st respondent pressurised the applicant to file the case. Thus, the applicant was compelled to file O.A. 319 of 1990 on 11.4.1990 and this Tribunal ordered notice before admission. D.R.P. Singh did not turn up in Hyderabad at all. The applicant therefore withdrew the O.A. 319 of 1990 on 25.11.1990. Since then respondent No.1 has become vindictive against the applicant.

4. On the day the 1st respondent visited Shri C. Suryanarayana, Advocate, he promised to settle all the matters pertaining to the applicant and suggested that the applicant might represent him in those matters. Taking the 1st respondent's words at their face value, the applicant submitted a representation on 2.4.1990 to the Director, CRIDA, to grant him the medical leave applied for, his leave salary, increments that have been withheld, CCA and arrears thereof, etc.. He also requested respondent No.1 to reconsider the transfer orders in the change of atmosphere and review the same. No action was taken in the matter. Respondent No.1 repeatedly asked the applicant directly and also through other officers to withdraw the case with the assurance that he would rectify the errors and undo the injustice done to the applicant. Inspite of the same, the applicant submitted his representation and respondent No.3, while forwarding the representation, strongly recommended the applicant's retention as his transfer was made ignoring the interest of KVK. There after the applicant withdrew O.A. 189 of 1990 in order to pursue his remedy with the authorities concerned and he submitted a representation dated 21.7.1990 to the new Director.

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The 2nd respondent forwarded the same and recommended the retention of the applicant in K.V.K. However, respondent No.1 by his order dt.28-7-1990 directed respondent No.2 to relieve the applicant on transfer. As this was not a speaking order and did not give any reasons to show how the applicant's representation stands disposed off, the applicant filed O.A.No.692 of 1990 for quashing the said order.

The Tribunal by its order dated 28-7-1990 directed that the applicant shall be continued in his present post if no one else has already been posted, until the disposal of the representation by the 1st respondent.

5. Pursuant to the said judgement dt.7-9-1990, the respondent No.1 passed an order dated 12-10-1990 rejecting the applicant's representation. Aggrieved by the said order of rejection, the applicant filed O.A.No.868 of 1990 questioning the impugned memorandum dated 12-10-1990. By the order dated 23-11-1990 in O.A.868 of 1990, this Tribunal set aside the impugned order transferring the applicant to Gunegal Research Farm and also the Memo dt.12-10-1990 by which the applicant's representation dt.21-7-1990 was rejected, on the ground that the post held by the applicant is a higher post than the Farm Superintendent, which is T-5 post. Taking advantage of the observations of the Tribunal and order quashing the impugned transfer order, the 1st respondent passed the impugned order dated 30-11-1990. It is against this order that the applicant has filed this

application.

6. We have heard Shri Y.Suryanarayana, learned counsel for the applicant and Shri E.Madan Mohan Rao, learned standing counsel for Respondents, who takes notice at the admission stage.

7. The points urged by Shri Suryanarayana are (i) there is no sanctioned post of T-6 in Gunagal Research Form (ii) the applicant ought to have given an opportunity to explain as to why the transfer order is not valid and not justifiable before effecting the transfer order (iii) The transfer order is the result of the malafide intention of the Respondent No.1 who wished to harass the applicant for no valid and justifiable reasons (iv) there is no public interest in the transfer order and it is naked vindictiveness on the part of the Respondent No.1 (v) the respondent No.1 has no authority to sanction new or additional posts and he cannot transfer the applicant without consulting ICAR (vi) the transfer has been made to satisfy the personnel ego of Respondent No.1 resulting in squandering of funds of ICAR. The transfer order has been made contrary to the assurance given by Respondent No.1 to Shri Suryanarayana, Advocate. Shri Madan Mohan Rao repelling the arguments of the learned counsel for the applicant points out that the applicant was transferred earlier on 28-2-1990 and even then the applicant had challenged that order in O.A.319/90 on the ground of malafide on the part of the then Director. He withdrew the application on 25-4-1990. He had filed another O.A.189 of

1990 which was also withdrawn on 18-7-1990. When the applicant's representation against the transfer order was rejected on 28-7-90, he filed O.A.692 of 1990 which was allowed on the ground that the order rejecting his representation doesnot give reasons. After the Respondent No.1 passed a speaking order, the applicant filed O.A.868 of 1990 which was allowed on 23-11-1990 on the ground that the order exfaise had posted him to a lower post and observed that it was open to the respondents to post him any where in T-6 post. It is thereafter that the present order under challenge has been issued as there is an immediate need of an agronomist at Gunegal research form. Shri Madan Mohan Rao points that even in the present case, the applicant attributes malafidees to Respondent No.1 i.e. the present director. Refering to the argument that the Respondent No.1 had visited the residence of Advocate Shri C.Suryanarayana, that the order is not valid as that power vests with the Director General, ICAR, that there is no sanctioned post of T-6 at Gunegal research farm, he states that the applicant should report these matters to the higher authorities i.e. the Director General, ICAR who can examine these aspects. The applicant ought to have submitted his representation to the D.G., ICAR before approaching the Tribunal. This is particulars so when the applicant is alleging personal motives and vindictiveness on the part of Respondent No.1. It is also for the

Director General, ICAR to consider the contents of the applicant whether there is need for the post of an agronomist at Gunegal farm or not, the availability of posts etc.

These are all administrative matters where the Director General, ICAR has to consider. He therefore contends that the application is premature.

8. On a careful consideration of the rival submissions, we are of the view that the application is premature. In Gujarat Electricity Board & another Vs. Atmaram Sungomal Poshani (AIR 1989 SC 1433) the Hon'ble Supreme Court observed (as) follows :-

"Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of his difficulty in moving from one place to the other."

The applicant is attributing motives in person to the former and the present directors. He refers to some assurance given to him by the present director in the home of the advocate Shri C.Suryanarayana as a quid pro-quo for taking him to the advocate in regard to his (Respondents) grie-
contd.../..

vance against administration. Again he contends that there are no posts of T-6 at Gunegul. 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 applicant 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.

9. In the result, the application is dismissed as premature. No order as to costs.

B.N.Jayashimha

(B.N.JAYASIMHA)
Vice Chairman

MS

(J.N.MURTHY)
Member (Judl.)

Dated: 24 December, 1990

Deputy Registrar (J)

To

1. Director, CRIDA, Santoshnagar, Hyderabad - 659.
2. The Officer-in-Charge, KVK, (CRIDA), Hayathnagar, Hyderabad.
3. Indian Council of Agricultural Research, represented by its Director-General, Krishi Bhawan, New Delhi-110 001.
4. One copy to Shri Y. Suryanarayana, Advocate, 40, M.I.G.H., Housing Board Colony, Mehdipatnam, Hyderabad - 500 028.
5. One copy to Shri E. Madan Mohan Rao, Addl. Central Government Standing Counsel.
6. One copy to The Hon'ble Mr. J. Narasimha Murthy, Member (J), C.A.T., Hyderabad Bench, Hyderabad.
7. One Spare Copy.

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